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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.11238 OF 2016

CIVIL WRIT PETITION NO.11239 OF 2016

Alfred Sebastian D'Aguiar (since deceased)
through LRs.

..Petitioners.

V/s.

Mohammed Hussain (since deceased) & Ors. ..Respondents.

Mr.S.R.Jabbar i/b. Tanvir Shaikh for the Petitioners.

Mr.Kunal Mehta with Ms.Dabashree Mandpe i/b. Ganesh & Co. for
Respondent No.2.

Mr.G.G.Ketkar – the first Assistant Court Receiver – present.

CORAM : N.M.Jamdar, J.

DATED : 19 January, 2017

P.C. :-

Both these writ petitions arise from the orders passed by the learned Small Causes Court, Mumbai wherein applications filed by the Petitioners, who are Defendants in the suit instituted by the Respondents, under Order VII Rule 11 of the Code of Civil Procedure, have been rejected. The suits in which the applications have been taken out are filed by the Respondents seeking a declaration that the Respondents are tenants of the suit property. The learned counsel for the Petitioners submits that the suit has been

filed by the Petitioners against the Respondents in the City Civil Court, Mumbai on the ground that they are trespassers and without awaiting decision of the suit, the applications have been rejected on merits rendering a finding regarding the maintainability of the present suit.

2. Having heard the learned counsel for the parties, I am of the opinion that since the suit filed by the Petitioners in the City Civil Court, Mumbai based on the contention of the Petitioners that the Respondents are trespassers, as informed by the learned counsel for the parties is likely to be decided soon, it would be appropriate to keep the issue regarding the maintainability of the present suits open depending on the decision made in the suit filed by the Petitioners. In case the Petitioners succeed in the suit filed in the City Civil Court, it will be open to the Petitioners to re-agitate the application taken out by the Petitioners under Order VII Rule 11 of the Code of Civil Procedure and the impugned order will not come in the way of the Petitioners. With this liberty and clarification, both the writ petitions are disposed of.

(N.M.Jamdar, J.)