

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.2450 OF 2018

Dilnavaz Boman Irani		Petitioner
Vs.		
Mr. Rusi Merwan Irani & Ors.		Respondents

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Mr. A.M. Rajabally, for petitioner.
Mr. Vishwajeet Sawant i/b Anand H. Gandhi, for Respondents No.1 and 2.
Mr. Mainuddin Chowdhari i/b Veerji, for Respondent No.8.

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CORAM : R.G. KETKAR, J.

DATE : 8TH MARCH, 2018.

P.C.

Heard Mr. Rajabally, learned Counsel for the petitioner, Mr. Sawant, learned Counsel for respondents No.1 and 2 and Mr. Chowdhari, learned Counsel for respondent No.8.

2. Mr. Rajabally seeks leave to transpose respondent No.10 as petitioner No.2 as application Exhibit 60 was made by this petitioner for substituting petitioners as defendants No.7A and 7 B after deleting respondent No.9 Mrs. Piloo Bomi Irani (defendant No.7). In view thereof, leave to amend is granted. Amendment shall be carried out forthwith.

3. By this Petition under Article 227 of the Constitution of

India, the petitioners have challenged the order dated 9th December, 2016 passed by the learned trial Judge, Small Causes Court, Mumbai below Exhibit 60 in R.A.E & R Suit No.795/1462 of 2004. By that order, the learned trial Judge rejected the application made by the petitioner for substituting petitioners as defendants No.7(A) and 7(B) after deleting the name of defendant No.7 Piloo Bomi Irani (since deceased). Aggrieved by this decision, the petitioner preferred Revision Application No.94 of 2017 before the Appellate Court. By order dated 17th May, 2017, the Appellate Court rejected the Revision Application on the ground that it is pre-mature and directed the learned trial Judge to dispose of Applications at Exhibit 60, 67 and 70 conjointly. It is, therefore, against these orders, the present Writ Petition is instituted.

4. Rule. Learned Counsel for the respective respondents waive service. Having regard to the narrow controversy raised in this Writ Petition and at the request and by consent of the learned Counsel for the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

5. In support of this Petition, Mr. Rajabally submitted that plaintiffs/respondents No.1 and 2 have instituted the suit, inter alia, contending that they along with defendant No.7 Mrs. Piloo Boman Irani are owners and landlords of the building situate at 80, Janbhumi Marg, Irani Building, Gogha Street, 2nd Floor, Fort, Bombay – 400 001. Defendant No.7 Mrs. Piloo Boman Irani was made a formal defendant as she was not available for the purpose of signing and lodging the suit. He submitted that the petitioners are daughters of defendant No.7 Mrs. Piloo Boman Irani. Defendant No.7 died leaving

behind the petitioners. Petitioner No.1, therefore, filed application Exhibit 60 for substituting petitioners as defendants No. 7(A) and 7(B) after deleting the name of defendant No.7 Mrs. Piloo Boman Irani. By order dated 9th December, 2016, the learned Trial Judge rejected the application on the ground that the plaintiffs/respondents No.1 and 2 have filed application Exhibit 67 for amending the plaint on the ground that the suit property is the trust property and the same is pending.

6. By order dated 17th November, 2017, the Appellate Court rejected the Revision Application on the ground that it is pre-mature and at the same time directed the learned trial Judge to decide the applications at Exhibit 60, 67 and 70 conjointly. In my opinion, though the Appellate Court was justified in directing the trial Court to dispose of all the applications viz: Exhibit 60, 67 and 70 together, it was not justified in rejecting the Revision Application on the ground that it is pre-mature. By rejecting the Revision Application, the Appellate Court has upheld the order dated 9th December, 2016 passed by the learned trial Judge.

7. In view thereof, order of the trial Court dated 9th December, 2016 is set aside. Application Exhibit 60 is restored to the file of the learned trial Judge. Clause (1) of the operative part of the order dated 17th November, 2017 is deleted and clause (2) is maintained. The learned trial Judge shall decide the applications at Exhibit 60,67 and 70 together and pass a common order. Rule is made absolute in the aforesaid terms with no order as to costs.

[R.G. KETKAR, J.]