

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE SIDE JURISDICTION**  
**WRIT PETITION NO.9305 OF 2018**

|                             |   |             |
|-----------------------------|---|-------------|
| Amit Vasu Manjeshwar        | ] | Petitioner  |
| Vs.                         |   |             |
| Mohammed Rashid Ismail Khan | ] |             |
| and others.                 | ] | Respondents |

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Mr. R.V. Sankpal, for Petitioner.  
Mr. Raj Patel i/b Mohan P. Patel, for Respondents.

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**CORAM : R.G. KETKAR, J.**

**DATE : 21ST AUGUST, 2018.**

**P.C.**

Not on board. At the request of Mr. Sankpal, taken up for admission.

2. Heard Mr. Sankpal, learned Counsel for the petitioner and Mr. Patel, learned Counsel for respondents No.1 to 4 at length.

3. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as “defendant No.2” has challenged the judgment and order dated 11<sup>th</sup> December, 2017 passed by the learned Judge, Court Room No.26, Court of Small Causes at Mumbai below Exhibit 19 in R.A.E & R Suit No.418/656 of 2007 as also the judgment and order dated 20<sup>th</sup> June, 2018 passed by the Appellate Bench of the Court of Small Causes at Mumbai in Revision Application No.123 of 2018. By these orders, the Courts

below rejected the application made by defendant No.2 under Order-VII, Rule-11 of the Code of Civil Procedure, 1908 (for short 'C.P.C') for rejection of the plaint.

4. In support of this Petition, Mr. Sankpal submitted that respondents No.1 to 4, hereinafter referred to as “plaintiffs” have instituted suit against father of defendant No.1 John D'Silva, who was the original tenant and defendant No.2, father of defendant No.1(b) Vasu Majeshwar, He died leaving behind him defendant No.1-Blossom John D'Silva. The plaintiffs contended that defendant No.1 had unlawfully sublet the suit premises to defendant No.2. During pendency of the suit, defendant No.1 died issueless. In view thereof, plaintiffs have brought on record Registrar, Court of Small Causes at Mumbai as defendant No.1(a). He submitted that as the plaintiffs have alleged that defendant No.2 is a trespasser and defendant No.1/tenant died, Small Causes Court has no jurisdiction to entertain and try the suit. The plaint is liable to be rejected as there is no relationship of landlord and tenant between the parties. He, therefore, submitted that the Courts below committed error in rejecting the application. He relied on the decision in the case of **Laxmidas Morarji (D) by Lrs Vs. Behrose Darab Madan, 2009 AIR (SC) (Supp) 2711**. Hence, the Petition requires consideration.

5. On the other hand, Mr. Patel supported the impugned orders. He submitted that it is not in dispute that defendant No.1 died issueless. In view of Order-XXII, Rule-4A, the plaintiffs filed application for deleting defendant No.1 and in her place substituting Registrar, Court of Small Causes at Mumbai to represent the estate of defendant No.1 (since deceased). By order dated 3<sup>rd</sup> August, 2011, the learned trial Judge has allowed the application. He relied on the decision of this Court in the case of **Gulabben wd/o Chimanlal Maniar & Others Vs. Narendra Balchandra & others, (2001) 4 Bom. C.R., 751** and in

particular paragraph 8 thereof to contend that in the application filed by the plaintiffs, it is specifically asserted that defendant No.1 died issueless without leaving any heirs and legal representatives. He submitted that the Courts below rightly came to the conclusion that the suit is between landlord and tenant and rightly rejected the application.

6. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. Mr. Sankpal relied on the decision of **Laxmidas Morarji (D) by Lrs** (supra). In that case, Dosabai was tenant in respect of the suit premises. Dhanbai, sister of Dosabai was staying with her brother in the suit premises. After the death of her brother in the year 1953, Dhanbai became tenant of the suit premises by virtue of section 5 (11) (c) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. She expired on 17<sup>th</sup> December, 1963. Dhanbai executed last Will dated 24<sup>th</sup> April, 1959 appointing defendants No.1 to 4 as trustees and executors of the Will. It was specific case of the plaintiff that respondent/defendant No.5 was not the tenant and had no legal and valid claim over the suit premises. It was further alleged that defendants No.1 to 4, trustees and executors of the Will had already parted with possession of the suit premises in favour of defendant No.5. The Apex Court observed that from the pleadings of appellants/plaintiffs, they did not consider defendant No.5 as tenant. Defendants No.1 to 4 could not inherit tenancy of Dhanbai and, therefore, this was not a suit between the landlord and tenant. In the present case, the plaintiffs have accepted that defendant No.1 Ms. Blossom John D'Silva was the tenant of the suit premises.

7. In view thereof, decision in the case of **Laxmidas Morarji (D) by Lrs** (supra) is not applicable to the facts of the present case. As the suit was instituted against defendant No.1/tenant and she died issueless, the plaintiffs

rightly followed the procedure laid down under Order- XXII, Rule-4-A and brought on record Registrar of the Court of Small Causes as defendant No.1(a).

8. In view thereof, I do not find that the Courts below committed any error in rejecting the application. Hence, the Petition fails and the same is dismissed. Liberty to apply for expeditious hearing of the suit is granted. If such application is made, the learned trial Judge to decide the same in accordance with law.

**[R.G. KETKAR, J.]**