

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 639 OF 2017
With
Writ Petition NO. 640 OF 2017

Mrs. Zarine Minoo Dastoor	...Petitioner
<i>Versus</i>	
Cricket Club Of India Ltd. And Anr.	...Respondents

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Mr P.S. Dani, Senior Advocate a/w. S.S. Kanetkar, Mrs. Nayna Rane and Nitesh Menon i/b. Divya Shah Associates, for the petitioner in both Petitions.

Mr. Anand Gandhi, Advocate for Respondent No.1.

Mr. Rita D. Bhatia, Advocate for Respondent No.2.

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CORAM : R. G. KETKAR, J.

DATE : 04th APRIL, 2018

PC.

1. Heard Mr.PS. Dani, learned Senior Counsel for the petitioner, Mr.Anand Gandhi, learned Counsel for respondent No.1 and Ms.Rita Bhatia, learned Counsel for respondent No.2, at length.

2. W.P. No.639/2017 takes exception to the judgment and order dated 31.3.2016 passed by the learned Judge, Court Room No.21 of the Court of Small Causes at Mumbai below Exhibit-108 in R.A.E. Suit No.485/999 of 1996 as also the judgment and order dated 4.10.2016

passed by the Appellate Bench of the Small Causes Court at Bombay in Revision Application No.188/2016. By these orders the Courts below rejected the application made by the petitioner, hereinafter referred to as the 'applicant' for impleading her as defendant No.2 in the suit instituted by respondent No.1, hereinafter referred to as the 'plaintiff'.

3. W.P. No.640/2017 takes exception to the judgment and order dated 31.3.2016 passed by the learned Judge, Court Room No.21 of the Court of Small Causes at Mumbai below Exhibit-117 in R.A.E. Suit No.485/999 of 1996 as also the judgment and order dated 4.10.2016 passed by the Appellate Bench of the Small Causes Court in Revision Application No.189/2016. By these orders the Courts below rejected the application made by the defendant for discharging Advocate representing the defendant or in the alternate for issuing direction to the Advocate to specify names for whom she is representing.

4. The applicant filed application Exhibit-108 for impleading her as defendant No.2 on the grounds that she is a necessary party. The applicant contended that the plaintiff landlord has instituted the suit against respondent No.2, hereinafter referred to as the 'defendant', for eviction from the suit premises. During pendency of the suit, one of the partners Ms. Maharukh Jal Irani expired on 4.8.2009. In view of death

of Ms. Maharukh Jal Irani, her rights in the partnership firm including the suit premises devolved upon the remaining partners including the applicant. The legal heirs of the deceased partner are entitled to share of the deceased partner in the suit premises. There has been certain conflict of interest between the partners *inter se*. Negotiations have taken place in order to settle entire dispute or at least a part of it. It is their case that other partners who are her brothers and sisters intend to take away all the monies and the benefits in the defendant firm.

5. The applicant also took out application Exhibit-117 for discharging Advocate representing the defendant or in the alternate for issuing direction to the Advocate to clarify specific names for whom she is representing. The Courts below have rejected both the applications. It is against these orders, the applicant has instituted present Petitions.

6. In support of these petitions, Mr. Dani submitted that the applicant is one of the partners of the defendant partnership firm. She being a partner, is a necessary party in the suit instituted by the plaintiff landlord against the defendant partnership firm. He submitted that the plaintiff and the defendant are trying to settle the matter. The defendant is likely to surrender possession of the suit premises or part of the suit premises. The defendant will be paid monetary compensation in view

of the settlement and she may not be paid her share being partner of the defendant partnership firm. He submitted that the Courts below committed serious error in holding that the tenancy rights were given to Sorab Irani, Rodabe Irani and Aban Irani and the applicant and the deceased Maharukh Irani were not given any tenancy rights. The plaintiff landlord has supported the applicant for her impleadment in the suit. He, therefore, submitted that the impugned orders deserve to be set aside thereby allowing applications Exhibit-108 and 117.

7. On the other hand, Ms. Bhatia supported the impugned orders. She submitted that the matter was adjourned from time to time to enable the plaintiff and the defendant to settle the dispute. However despite the matter being adjourned, settlement could not take place because of variety of reasons. In any case, she submitted that the tenancy rights were given only to Sorab Irani, Rodabe Irani and Aban Irani and not to the applicant.

8. Mr. Gandhi submitted that in case the dispute is settled between the plaintiff and the defendant and monies are to be paid to the defendant, the entire amount would be paid by cheque in the name of the defendant partnership firm. He assures that in the event of settlement taking place and the plaintiff paying the amount to the

defendant partnership firm, said fact will be intimated to the applicant herein in writing. Ms. Bhatia states that in case the amount is received from the plaintiff, without prejudice to the rights and contentions of the defendants, 20% amount received from the plaintiff will be paid to the applicant.

9. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. In paragraph-11, the Appellate Court considered the Partnership Deed dated 7.6.1976 and the Partnership Deed dated 2.7.1984. In paragraph-11, in particular in clauses (3), (5) & (6), it was observed thus :

11. After reading both the partnership deeds, following position emerges :

1. xxxx
2. xxxx
3. Tenancy rights were restricted to Khodabux Irani and his wife Frany Irani.
4. xxxx
5. Sorab Irani and his four sisters Rodabe, Aban, Mahrukh and Zarine were the partners as per the Deed dated 02.07.1984.
6. Earlier partner Frany Irani retired from the Firm on 01.07.1084. Tenancy rights were given only to Sorab Irani, Rodabe Irani and Aban Irani.”

10. In paragraph-25, the Appellate Court observed thus :

“25. So, what we gather from the second partnership Deed is that only Sorab, Rodabe and Aban were given tenancy rights. In other words, present applicant Zarine and deceased Mahrukh were not given any tenancy rights. So, what we find is that similar was the intention of the partners when they reconstituted partnership Deed dated 07.06.1976. At that time also, only Khodabux and Frany were given tenancy rights.”

11. In view of this categoric finding, it is not possible to accept the submissions of Mr. Dani that the applicant is either a necessary or proper party. In view thereof, I do not find that the Courts below committed any error in rejecting the application Exhibit-108. Once the application at Exhibit-108 is dismissed consequently the challenge to rejection of the application at Exhibit-117 does not survive. In view thereof, both the Petitions fail and the same are dismissed. However, in the event of the plaintiff and the defendant settling the dispute and the plaintiff paying the amount by cheque in favour of the defendant Partnership Firm, said fact shall be intimated in writing to the applicant. The defendant, without prejudice to its rights and contentions will make payment of 20% of the amount so received by the

plaintiff to the applicant. Liberty to apply to the applicant in case despite settlement between the plaintiff and the defendant, no payment is made to her. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)