

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.1388 OF 2019

|                              |     |             |
|------------------------------|-----|-------------|
| Gayatri Sen                  | ... | Petitioner  |
| Vs.                          |     |             |
| Leena Arun Samant and others | ... | Respondents |

Mr. R. S. Apte, Senior Advocate i/b. Mr. N. R. Bubna for Petitioner.

**CORAM : R. G. KETKAR, J.**  
**DATE : JANUARY 31, 2019**

**P.C. :**

Not on Board. At the request of Mr. Apte, learned Senior Counsel for the petitioner, taken up for admission.

2. This Petition takes exception to the order dated 27.11.2018 passed by the learned Judge, Court Room No.13 of the Court of Small Causes at Bombay below exhibit-86 in R.A.E. Suit No.581/1113 of 1998 as also the order dated 19.01.2019 passed by the Appellate Bench of the Small Causes Court in Revision Application No.533 of 2018. By these orders, the Courts below rejected the application filed by the defendants under Order I, Rule 10 and Order I, Rule 4 of the Code of Civil Procedure, 1908 (for short 'C.P.C.').

3. In support of this Petition, Mr. Apte strenuously contended that original plaintiffs died in the year 2002 and 2007 and plaintiffs No.1(a) to 1(f) were brought on record as their legal representatives. Plaintiffs No.1(a), 1(c) and 1(f) had released their respective 1/6<sup>th</sup> undivided share, right, title and interest in the entire suit property in favour of plaintiff No.1(b) by executing duly registered release deeds dated 08.02.2008 and 18.02.2008. The said fact is, however, suppressed from the Court. He submitted that the Suit is instituted invoking ground of reasonable and bonafide requirement as contemplated by Section 13(1)(g) of the Bombay Rents, Hotel, Lodging House Rates Control Act, 1947 (for

short 'Rent Act'). As plaintiffs No.1(a) and 1(c) to 1(f) have divested themselves, their names deserve to be struck out from the plaint. He, therefore, submitted that the Petition requires consideration.

4. I have considered the submissions advanced by Mr. Apte. I have also perused the material on record. In paragraph 7, the learned trial Judge has considered this aspect. The learned trial Judge observed that the provisions of Order I, Rule 4 of C.P.C. can be invoked at the time of final hearing. No prejudice or hardship will be caused to the defendants in any manner whatsoever. The learned trial Judge, therefore, declined to invoke discretion under Order I, Rule 10(2) of C.P.C. for striking out the names of plaintiffs No.1(a) and 1(c) to 1(f). In paragraph 10, the Appellate Court observed that the learned trial Judge has already kept open the issue of effect of execution of release deed by plaintiffs No.1(a) and 1(c) to 1(f) in favour of plaintiff No.1(b) for consideration at the time of final adjudication of the Suit. No substantive rights of original defendant No.1(a) are affected by passing the impugned order. For the reasons recorded in paragraph 10, I do not find that the Appellate Court has committed any error in passing the order. As mentioned earlier, the learned trial Judge has kept the issue about the effect of execution of release deed by plaintiffs No.1(a) and 1(c) to 1(f) in favour of plaintiff No.1(b) for consideration at the time of final adjudication of the Suit. All the contentions of the parties on merits are expressly kept open. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

**(R. G. KETKAR, J.)**