

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13464 OF 2018

Minakshi Subhash Bhalerao ... Petitioner
Vs.
Madhusudan Pandurang Shelukar and others ... Respondents

Mr. Satyajeet P. Dighe for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : JANUARY 23, 2019

P.C. :

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

2. Leave to amend so as to substitute plaint is granted. Amendment shall be carried out forthwith.

3. This Petition takes exception to the order dated 25.04.2018 passed by the learned 2nd Joint Civil Judge, Senior Division, Nashik below exhibit-326 in R.C.S.No.916 of 1997. By that order, the learned trial Judge rejected the application made by the petitioner - Minakshi Subhas Bhalerao and two others under Order I, Rule 10 read with Section 22 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for adding them as necessary party to the Suit.

4. Respondent No.1 has instituted R.C.S.No.916 of 1997 in the trial Court against the defendant No.1 - Damodar Bhalerao, defendant No.2, defendant No.3 - Subhash D. Bhalerao, defendant No.4 - Milind Manohar Shirsath, defendant No.5 - Sureshbhai Patel and defendant No.6 - Nareshbhai Patel for recovery of possession of shop situate on the ground floor of municipal house No.1087 within the municipal limits of Nashik Municipal Corporation. During the pendency of the Suit, defendant No.1 Damodar Bhalerao died. Defendant No.1A -

Lilabai Damodar Bhalerao, defendant No.1B - Subhash D. Bhalerao and defendant No.1C - Sunil D. Bhalerao were brought on record as his heirs and legal representatives. Defendant No.1B - Subhash D. Bhalerao, who is also defendant No.3, died on 23.06.2009. The plaintiff filed application on 18.07.2009 for bringing Atul Subhash Bhalerao, son of Subhash Bhalerao as the legal representative of defendant No.1B, Subhash D. Bhalerao on record. By order dated 20.03.2017, the learned trial Judge allowed the application and permitted amendment of bringing Atul Subhash Bhalerao as legal representative of defendant No.1B, Subhash D. Bhalerao on record. The petitioner filed application exhibit-326 on 05.04.2018 inter alia contending that defendant No.1B, Subhash died leaving behind the petitioner, Poonam Subhash Bhalerao and Atul Subhash Bhalerao. Prayer was, therefore, made for bringing them on record as the legal representatives of deceased Subhash. By the impugned order, the learned trial Judge rejected the application. It is against this order, the present Petition is instituted.

5. In support of this Petition, Mr. Dighe strenuously contended that Subhash Bhalerao died leaving behind the petitioner as also Poonam Bhalerao and Atul Bhalerao as his legal representatives. They are necessary parties in the Suit instituted by the plaintiff for recovery of possession of the suit premises. The learned trial Judge was not justified in rejecting the application. He submitted that the legal representatives of Subhash are carrying on business through defendant No.6 i.e. Nareshbhai Patel, and therefore, in terms of Section 5(11)(c)(ii) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Bombay Rent Act'), they are required to be brought on record. He, therefore, submitted that the impugned order deserves to be set aside.

6. Mr. Dighe relied upon the decision in ***Textile Association (India) Bombay Unit Vs. Balmohan Gopal Kurup, (1990) 4 SCC 700*** to

contend that after the death of the main tenant if the Suit is filed against the family members of the deceased but without impleading one of his sons, in view of the finding of the Courts below that respondent was as much a tenant as other members of the deceased's family living in the premises, decree for eviction obtained against the other family members without impleading the respondent has to be set aside. In the present case, if the plaintiff succeeds and eviction decree is passed, the same will not be binding on the petitioner and Poonam.

7. I have considered the submissions advanced by Mr. Dighe. I have also perused the material on record. A perusal of the application filed by the petitioner shows that in the application, it is nowhere asserted that petitioner and Poonam are carrying on business in the suit premises at the time of death of Subhash. In fact, as far as the occupation of petitioner and Poonam is concerned, it is mentioned as 'household'. In paragraph 3 of the impugned order, the learned trial Judge observed that applicants have not averred in their application that at the time of death of Subhash Bhalerao, they were or one of them was running the business in the suit property. Section 5(11)(c)(ii) of the Bombay Rent Act reads thus,

5. Definitions.- In this Act unless there is anything repugnant to the subject or context,-

(11) 'tenant' means any person by whom or on whose account rent is payable for any premises and includes-

(c)(ii) in relation to any premises let for the purposes of education, business, trade or storage, when the tenant dies, whether the death has occurred before or after the commencement of the said Act, any member of the tenant's family using the premises for the purposes of education or carrying on business, trade or storage in the premises, with the tenant at the time of his death, or, in the absence of such member, any heir of the deceased tenant, as may be decided in default of agreement by the Court."

8. In view thereof and for the reasons recorded in paragraph 3 of the

impugned order, I do not find that the learned trial Judge has committed any error in passing the impugned order. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

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