

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4109 OF 2022

The Trustees of the N.M. Wadia Charities & Ors... Petitioners
v/s.
Mrs. Perviz D. Adagara & Ors. .. Respondents
....
Mr. Jamsheed Master, i/b. Natasha Bhot, for the Petitioners.

....
CORAM : S.M. MODAK, J.

DATE : 6 SEPTEMBER 2022

P.C. :

Heard learned Advocate for the Petitioners.

2. Though the farad sheet says that office objection about deficit court fee is not complied with, categorically it is submitted that it is complied with. The matter is taken up for hearing on the assurance that if deficit court fee is there it will be cleared at the earliest.

3. Petitioner Nos. 2 and 3 are the trustees, who along with three other proposed appellants, have requested the appellate bench of Small Causes Court to add their names in the array of the appellants. That application was made on 27 October 2021 in Appeal No.201 of

2007. That appeal is filed against the judgment of the trial court. The trial court has partly allowed tenancy eviction and recovery suit.

4. The appellate bench has rejected that application on the same day. It was rejected because appellate bench feels that the application was not as per the provisions of Order 31 Rule 1 of CPC but under the provisions of Order 31 Rule 2 of CPC and hence, all trustees need not be parties. The grievance of the said decision is challenged by way of this writ petition. Initially, it was filed as civil revision application and later on converted into writ petition.

5. Though notices are served on Respondent Nos. 1 to 3, who are the respondents before the appellate bench, they have not appeared. There is a request to decide this petition finally. Considering the short issue involved it is taken up for final hearing.

6. With the assistance of learned Advocate for the Petitioners, the provisions of Order 31 Rule 1 and 2 of CPC are perused. On the reading them this Court feels that the appellate bench has wrongly treated that application under the provisions of Order 31 Rule 1 of CPC. Rule 1 will be applicable when the contention arises in between the beneficiaries of the trust property on one hand and the third person on the other hand. In that eventuality, the beneficiary is represented by the trustee. Rule 1 further says that the trustees need not be made

as a party ordinarily. Ultimately, there is a discretion vested in the Court whether to make the trustees as parties or not.

7. The appeal pending before the appellate bench arises from the judgment of the trial court. It is submitted that the contention was not between the beneficiaries and a third person, but the contention is in between the trustees on one hand and the Respondents, who are trespassers according to the trustees, on the other hand. Hence Rule 1 is not applicable.

8. Rule 2 talks about joinder of trustees when there are several trustees. There is emphasis on this provision. The appellate bench has wrongly held that application for amendment is not under Rule 2. When the averments in the application are perused, it seems that the five new trustees want them to be impleaded. A copy of change report submitted to the office of Charity Commissioner was also annexed to that application (though not in this petition).

9. The appellate bench has not considered this fact and wrongly jumped to the conclusion that Rule 2 is not applicable. The said observation needs to be set aside. When the impugned order is perused, it is very well clear that it is unreasoned and cryptic order. If the appellate bench opines that the application was under the provisions of Order 31 Rule 1 of C.P.C. certainly they can hold it. That

judicial freedom is certainly available to any judge. But said opinion must be arrived at by giving reasons and reason is the soul of any judgement/order. Because it gives an opportunity to the appellate court to scrutinize those reasons. Unfortunately in this case this opportunity is lost. Hence matter needs to be remanded.

10. There is a grievance that said order is passed even though learned Advocate representing the Applicants therein have expressed desire to argue the matter and they were not allowed to advance the arguments on the pretext that the order is already passed. There are averments in para no.9 of the writ petition to that effect. Passing the order without giving reasons fortifies the grievance now made before this Court. The order cannot be sustained.

11. Reliance is placed on the judgments in the case of *Atmaram Ranchhodbhai vs. Gulamhusein Gulam Mohiyaddin And Anr.*¹ and *Homi Nariman Bhiwandiwalla vs. The Zoroastrian Co-operative Credit Bank Ltd. And Anr.*².

12. The Full Bench of Gujarat High Court has taken a view that all four trustees must be joined in filing a suit to recover possession of the property from the tenant after determination of the lease (para 12). Whereas this view is affirmed by this Court in second judgment.

1 AIR 1973 Guj 111 (FB)

2 AIR 2001 Bom 267

In para no.16 there is a reference to that effect. The Petitioners are at liberty to point out these judgments to the appellate bench. The matter needs to be remanded. The above observations are made as this Court finds that the impugned order is unreasoned one. The appellate bench is at liberty to decide the application afresh after hearing both the sides.

13. It is also submitted that there is one more application for amendment filed by another newly added trustee and it is pending before the appellate bench. Along with that application, the present application can also be heard and decided.

14. In view of that, the following order is passed:

- (i) The writ petition is allowed.
- (ii) The order dated 27 October 2021 passed by the appellate bench of the Small Causes Court in Appeal No.201 of 2007 is set aside.
- (iii) The appellate bench is directed to give hearing to the parties, including the appellants to advance their arguments along with the citation which they want to rely upon and decide the application as per the merits by well

reasoned order.

(iv) The writ petition is disposed of.

(S.M. MODAK, J.)