



Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10564 OF 2023

Mrs. Nasima Yusuf Mitha & Ors. ...Petitioners

V/s.

The State of Maharashtra & Ors. ...Respondents

Mr. Maroof M. Khan, for the Petitioners.

Mr. C. D. Mali, AGP, for the Respondent No.1-State.

Dr. Abhinav Chandrachud a/w M. A. Sayed, for Respondent No.2.

Mr. Sagar Ruparel - Intervenor for Mr. Imran Mitha.

Mr. Shailesh Kharat - Intervenor for Mr. Suleman Mitha.

CORAM : MADHAV J. JAMDAR, J.

DATED : AUGUST 25, 2023

P.C.:

1. Heard Mr. Maroof Khan, learned counsel appearing for the Petitioners, Mr. Mali, learned AGP, appearing for the Respondent No.1-State and Dr. Chandrachud, learned counsel appearing for the Respondent No.2.

2. The Petitioners by this Writ Petition filed under Article 226 and 227 of the Constitution of India are challenging the legality and validity of the order dated 23rd August 2023 passed by the learned Appellate Officer of the Maintenance and Welfare of Parents and Senior Citizens Appellate Tribunal (hereinafter referred to as **“the Appellate Tribunal”**) in Appeal filed by the Petitioners as well as the order dated 25th May 2023 passed by

the learned Competent Authority, the Maintenance and Welfare of Parents and Senior Citizens Tribunal (hereinafter referred to as **“the Tribunal”**).

3. By the impugned order dated 25th May 2023 passed by the learned Tribunal, Asif Iqbal Mitha, son of the Respondent No.2 is directed to handover possession of Shop No.2, Minara Masjid Building, 41/H, Mohammed Ali Road, Mumbai - 400 003 (hereinafter referred to as **“the said shop”**) to the Respondent No.2.

4. The said order is challenged by the present Petitioners claiming to be the sisters of deceased Iqbal Suleman Mitha. Said deceased Iqbal Mitha is the husband of Respondent No.2-Roshan Iqbal Mitha. The impugned order dated 25th May 2023 has been passed against Asif Iqbal Mitha i.e. son of deceased Iqbal Mitha and Respondent No.2-Roshan Iqbal Mitha. It is very important to note that said Asif Iqbal Mitha has not challenged the impugned order. The impugned order is challenged by the Petitioners who are the sisters of deceased Iqbal Mitha. In view of this position, important question to be determined is whether the present Petitioners have any locus to challenge the impugned order dated 25th May 2023.

5. It is undisputed position that the said shop is the tenanted premises and not the ownership property of deceased Iqbal

Mitha. It is the contention of learned counsel appearing for the Petitioners that the said shop is the tenanted premises of Suleman Mohammad Mitha i.e. the father of the Petitioners and deceased Iqbal Mitha and, therefore, they have got right, title and interest in the said shop premises.

6. It is admitted position that the said shop is not the ownership property and the same is the tenanted property. It is significant to note that said Asif Iqbal Mitha i.e. the son of the Respondent No.2 against whom the impugned order has been passed by the learned Tribunal has filed R.A.D. Suit No.316 of 2021. It is the claim of Asif Iqbal Mitha in the said Suit that he was conducting business from the said shop during the lifetime of and also after the demise of his father Iqbal Mitha. The relevant contentions for deciding the present Writ Petition are in the paragraphs 3 to 8, which read as under :-

- “3. The Plaintiff states that the tenancy right in the Suit Premises presently stands in the name of Plaintiff’s grandfather i.e. one Shri Suleman Mohammad Mittha (hereinafter referred to as **‘Said Suleman’**).
4. The Plaintiff states that his grandfather had three sons and four daughters i.e. Khalid Suleman Mittha (hereinafter referred to as **‘Said Khalid’**), Ismail Suleman Mittha (hereinafter referred to as **‘Said Ismail ’**), Iqbal Suleman Mittha (hereinafter referred to as **‘Said Iqbal’**), Farida Suleman Mittha (hereinafter referred to as **‘Said Farida’**), Zarina

Suleman Mittha (hereinafter referred to as '**Said Zarina**'), Hamida Suleman Mittha (hereinafter referred to as '**Said Hamida**'), and Nasima Suleman Mittha (hereinafter referred to as '**Said Nasima**'). The said Iqbal Suleman Mittha was the father of Plaintiff, Defendant Nos.2 & 3 and husband of Defendant No.1.

5. **The Plaintiff states that as per the family understanding, the Suit Premises came to the share of Plaintiff's father said Iqbal and accordingly all his lifetime said Iqbal has done business from the Suit Premises.**
6. The Plaintiff further states that there are no dispute between the brothers of Plaintiff's father i.e. said Khalid and Ismail, as they are doing business from other premises which came to their share as per family settlement.
7. The Plaintiff states that his father had three sons i.e. Plaintiff, Defendant Nos.2 and 3. The Defendant No.3 had during the lifetime his father started his independent business from Shop No.8 in the name of 'Ayesha Collection' and thereafter took another Shop No.6 and started doing business in name of 'Moin Enterprise' Defendant No.3 started these business after the names of his children.
8. **The Plaintiff states that he has been doing business from the suit premises, during the lifetime of his father Shri. Iqbal as well as after his demise."**

7. Section 7 (15) of the Maharashtra Rent Control Act, 1999 (hereinafter referred to as "**the Rent Act**"), defines tenant *inter*

alia as in relation to any premises, when the tenant dies, whether the death occurred before or after the commencement of the said Act, any member of the tenant's family, who, where they are let for education, business, trade or storage, is using the premises for any such purpose, 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 the absence of agreement, by the court. The explanation to said Section 7 (15) provides that the provisions of this clause for transmission of tenancy shall not be restricted to the death of the original tenant, but shall apply even on the death of any subsequent tenant, who becomes tenant under these provisions on the death of the last preceding tenant.

8. Thus, it is clear that said deceased Suleman was the original tenant. Thereafter, the tenancy is transmitted to deceased Iqbal Mitha and thereafter, to any member of Iqbal's family who is conducting business along with deceased Iqbal or any heir of deceased Iqbal, as more particularly provided in Section 7 (15) of the Rent Act.

9. Admittedly, the Petitioners are the sisters of deceased Iqbal Mitha who was the tenant. It is not their claim that they were conducting the said business along with deceased Iqbal Mitha. In fact, the dispute as aforesaid is pending in the Small Causes Court between the Respondent No.2-Roshan Iqbal Mitha and her sons

i.e. Asif, Suleman and Imran. The definition of tenant as provided in Section 7 (15) of the Rent Act contemplates, only a member of tenant's family who is conducting the business along with deceased tenant at the time of his death or in absence of such member, any heir of the deceased tenant as the tenant. It is not the claim of the Petitioners i.e. the sisters of deceased Iqbal Mitha that they were conducting the business in the said shop along with deceased Iqbal Mitha. Therefore, they have no right, title and interest in the said shop and therefore, have no locus to challenge the impugned order of the learned Tribunal dated 25th May 2023. However, it is clarified that all these observations are made for the purpose of examining the order passed by the learned Tribunal. The inquiry contemplated under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as "**the Senior Citizens Act**") is summary in nature and, therefore, does not decide the question of title.

10. It is significant to note that even though the impugned order has been passed against Asif Iqbal Mitha, yet he has not challenged the same. Therefore, there is no substance in the Writ Petition as far as the impugned order dated 25th May 2023 is concerned.

11. By the impugned order dated 23rd August 2023 of the learned Appellate Tribunal, it has been held that the Appeal is not

competent at the instance of the Petitioners. It is the contention of learned counsel appearing for the Petitioners that Sub-Section (1) of Section 16 of the Senior Citizens Act provides that, any senior citizen or a parent, aggrieved by an order of a Tribunal may, within sixty days from the date of the order, prefer an appeal to the Appellate Tribunal. It is the submission of learned counsel appearing for the Petitioners that as all the Petitioners are senior citizens, the Appeal filed by them under Section 16 of the Senior Citizens Act is maintainable. However, the senior citizen as contemplated under Section 16 of the Senior Citizens Act is not any senior citizen but is the one contemplated under Section 4 of the Senior Citizens Act. Sub-Section (1) of Section 4 of the Senior Citizens Act provides that, a senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him, shall be entitled to make an application under Section 5. Section 5 of the Senior Citizens Act contemplates that an application for maintenance under Section 4 may be made by a senior citizen or a parent as the case may be. Therefore, it is very clear that the Appeal which is contemplated by senior citizen or parent under Section 16 is the Appeal by senior citizen or parent who has filed application for maintenance under Sections 5 read with Section 4 of the Senior Citizens Act. Therefore, the order of the learned Appellate Tribunal that the

Appeal at the instance of the Petitioners who are not the senior citizens who have filed Application under Section 5 read with Section 4 of the Senior Citizens Act is not competent, is correct.

12. However, as the Appeal at the instance of the Petitioners is not competent, learned counsel appearing for the Petitioners is right in contending that he can challenge the impugned order dated 25th May 2023 of the learned Tribunal by filing the Writ Petition under Article 226 and 227 of the Constitution of India.

13. Although, the Writ Petition is maintainable for the reasons set out hereinabove, as the Petitioners have no right, title and interest with respect to the said shop, therefore, challenge to the impugned order dated 25th May 2023 of the learned Tribunal cannot be examined at their instance.

14. However, it is made clear that the Petitioners can approach the Rent Court contemplated under the provisions of the Rent Act or any other proceeding, for establishing their right to the said shop. The contentions of all the concerned parties in that respect are expressly kept open. It is clarified that, the observations made in this order are only for the purpose of examining the legality and validity of the impugned order dated 25th May 2023 passed by the learned Tribunal and all the contentions on merits are expressly kept open.

15. It is also clarified that said order dated 25th May 2023 of

the learned Tribunal can be challenged by son of the Respondent No.2 i.e. Asif Iqbal Mitha against whom order of possession is passed. It is also clarified that this Court has not examined the merits of challenge to the impugned order, if any, at the instance of said Asif Iqbal Mitha and all the contentions in that regard are expressly kept open.

16. Accordingly, the Writ Petition is dismissed, subject to above clarifications, with no order as to costs.

[MADHAV J. JAMDAR, J.]