

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**INTERIM APPLICATION NO. 1143 OF 2023
IN
WRIT PETITION NO. 2745 OF 2022**

**Smt.Kamal Shantaram Tajane,
Since deceased Thr. LRs.
Mahesh Shantaram Tajane & Ors.**

..... Applicants

IN THE MATTER OF

Smt.Kamal Shantaram Tajane

..... Petitioner

VERSUS

Sudhir Gangadhar Borgaonkar

..... Respondent

Mr.Akash Warang for the Applicants/Petitioner.

Mr.A.A.Garge a/w. Mr.Kashyap Bhalerao for the Respondent.

CORAM: ABHAY AHUJA, J.

DATE : 17th AUGUST, 2023

P.C:-

. Heard.

2. This is an application seeking to bring on record the heirs/legal representatives of the deceased Petitioner. Reply and Rejoinder have also been filed.

3. Mr. Warang, learned Counsel for the Applicants, would submit that in pursuance of Order 22 Rule 3 of the Code of Civil Procedure, 1908 (CPC), this application has been preferred within a period of 90 days and is in time. Learned Counsel would point out that, the Petitioner, as per the death certificate annexed at Ex.A to the application, died on 24th September, 2022, and this application dated 14th November, 2022 was filed on 17th November, 2022, which is within a period of 90 days, i.e. within the limitation prescribed under Article 120 of the Limitation Act, 1963 and ought to be allowed.

4. On the other hand, Mr. Garge, learned Counsel for the Respondent, opposes the application and refers to the reply dated 22nd June, 2023 filed on behalf of the Respondent. Mr.Garge would submit that, firstly, the Applicants did not reside with the Petitioner at the time of his death, and therefore, cannot be allowed to be brought on record in breach of Section 7(15) (d) of the Maharashtra Rent Control Act, 1999 (the “Rent Control Act”). Learned Counsel would submit that the basis of such an averment is the Aadhar Card of the legal representatives which indicates an address other than the suit premises, though the same is denied by the learned Counsel for the Applicants and learned Counsel refers to the Rejoinder filed on behalf of the Applicants. Learned Counsel further submits that, also the Petitioner

had been in breach of the undertaking with respect to vacating the suit premises furnished to the Appellate Court and also in breach of the decree directing the Petitioner to pay Rs.10/- per day as compensation from the date of filing of the suit till realization of the actual possession of the suit premises.

5. Learned Counsel would submit that, on these grounds, the application filed by the legal representatives to be brought on record in place of the deceased Petitioner ought to be dismissed.

6. I have heard learned Counsel Mr.Warang and Mr.Garge and considered the rival contentions. Affidavits in reply on behalf of the Respondent and rejoinder filed on behalf of the Applicants have been considered.

7. The brief facts are that the Respondent herein, being the owner of the House No.54, situated at Aali No.1 Ram Maruti Road, Aasha Sadan Society, Kalyan West, Dist. Thane (referred to as the “suit premises”), had filed a suit for eviction and possession of the suit premises against the Petitioner, who was the tenant, on the ground of constructing permanent structure, causing nuisance and annoyance. The Trial Court viz. Civil Judge, Junior Division, Kalyan, decreed the suit with costs in favour of the Respondent and directed the Petitioner

to hand over the vacant and peaceful possession of the suit premises within three months of the said order and also to pay compensation at the rate of Rs.10/- per day to the Respondent from the date of filing of the suit till realization of actual possession of the suit premises. Being aggrieved by the said judgment and decree, Petitioner preferred Appeal bearing No.106 of 2014 before the District Judge, Kalyan. The Appellate Court dismissed the Appeal and confirmed the judgment and decree passed by the Trial Court holding that the Respondent proved that the Petitioner had erected construction in the suit property which is of permanent nature and also that the Petitioner had encroached upon the adjacent land and it was also proved that the said conduct of the Petitioner amounted to nuisance and annoyance. The Appellate Court also found that the Respondent was entitled for vacant and peaceful possession of the suit premises, injunction and possession.

8. Aggrieved, the Petitioner had filed the Writ Petition challenging the judgment and decree of the Appellate Court dated 17th November, 2021 under Article 227 of the Constitution of India, seeking to set aside the two orders, of the Appellate Court as well as the Trial Court. However, as noted above, during the pendency of the Petition, the Petitioner has died, and the Applicants, who are the heirs/legal representatives of the deceased Petitioner, have taken out this

Application under Order 22 Rule 3 of the CPC for being brought on record.

9. Under Order 22 Rule 3 of the CPC, it is *inter alia* provided that where the sole surviving plaintiff dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative(s) of the deceased plaintiff to be made a party(ies) and shall proceed with the suit. Sub-clause (2) of Rule 3 provides that if the application is not made within the time, the suit shall abate. It is settled law that the provisions of Order 22 also apply to writ petitions. The limitation period for bringing the legal heirs on record as per Article 120 of the Schedule to the Limitation Act, 1963, is 90 days. The Petitioner in this case died on 24th September, 2022, and the application dated 14th November, 2022 was filed on 17th November, 2022. As such the application is within the limitation period.

10. All that the learned Counsel for the Respondent has urged is that the Appellants viz. the legal representatives are not tenants under the provisions of section 7(15) (d) of the Rent Control Act, 1999. In my view, whether the Applicants are tenants or not under the provisions of Section 7(15) (d) of the Rent Control Act would be a matter to be decided in the Writ Petition and not at this stage, in respect of which,

the Respondent is entitled to file a reply to the main writ petition. It is not in dispute that the Applicants are legal heirs / representatives of the deceased Petitioner nor is there an argument on behalf of the Respondent that the right to sue has not survived. Mr. Warang has denied the submission on behalf of the Respondent that the Applicants were not residing with the Petitioner at the time of his death. In fact, in paragraph 10 of the Rejoinder, the Applicants have stated that they were residing at the time of death of the Petitioner with the Petitioner as the Petitioner was old and she required support and help. That, the suit premises have been used by the Applicants' family since 100 - 150 years. The Applicants have stated that the Aadhar Card has shown wrong house numbers but the fact is that Parsee Chawl is reflected in the Aadhar Card of Applicant No.4. That, the Applicant No.3 had temporarily shifted to Bhalerao Nagar but is presently residing at the suit premises itself. The legal heirs / representatives, in my *prima facie* view, have interest in the suit premises. The suit was filed by the Respondent-landlord for possession from the Petitioner which was decreed and the same is under challenge in the writ petition. Therefore, in my view, the right to sue would survive in favour of the Applicants. Moreover, it is nobody's case that the right to sue has not survived. Therefore under the provisions of Order 22 Rule 3 of the CPC there has been no abatement. Also, whether the Petitioner (now deceased) abided

by the undertaking or the decree are aspects to be considered at the time of hearing of the Writ Petition and not at the time of considering whether the legal representatives of the deceased Petitioner are to be brought on record or not. Also, whether the Applicants are the tenants or not under section 7(15)(d) of the Maharashtra Rent Control Act, 1999 can be considered at the hearing of the Writ Petition.

11. Ergo, this Court is of the view that the application fits within the four walls of Order 22 Rule 3 of the CPC and deserves to be allowed.

12. Let the Applicants be impleaded as the legal representatives of the deceased Petitioner.

13. Let the amendment be carried out within a period of two weeks from the date of uploading of this order.

14. Let the amended copy of the Petition be served on the other side within a period of one week thereafter.

15. Application stands allowed in the above terms. Parties to bear their own costs.

[ABHAY AHUJA, J.]