

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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WRIT PETITION NO. 1913 OF 2019
WITH
INTERIM APPLICATION NO.1627 OF 2023
WITH
INTERIM APPLICATION NO.1626 OF 2023

Smt. Jayalaxmi Kantilal ...Petitioner
Versus
Mr. Kamlesh Singh H. Chowhan ...Respondent

Adv. Suryajeet P. Chavan for the Petitioner.

Mrs. Prachi Tatake for Intervenor in IA.1626/2023.

Mr. Vivek Kantawala a/w. Mr. Amey Patil i/b. Vivek Kantawala &
Co., for the Respondent

CORAM : RAJESH S. PATIL, J.

DATED : 15 APRIL 2024

PC.:

INTERIM APPLICATION NO.1627 OF 2023

1. This Interim Application has been filed to bring on
record the legal heirs of the deceased sole petitioner.

2. There is a delay of 45 days in filing this Interim
Application.

3. Mr. Kantawala, learned counsel appearing on behalf of the sole respondent has opposed this Interim Application on the grounds that under the provision of Maharashtra Rent Control Act only the deceased tenant's, legal heir's who was residing with the tenant at the time of the death of the tenant will be entitled to be brought on record. He submits that only proposed petitioner No.1 (D) should be brought on record, since she is the person who was residing with the deceased tenant, when the deceased tenant died. He referred to the judgment of ***Vasant Sadashiv Joshi Vs. Yeshwant Shankar Barve*** reported in ***2020 (1) Bom. C.R. 763***.

4. Mr. Chavan, learned counsel appearing on behalf of the petitioner submits that the present application is filed under the provision of the Order XXII of the Code of Civil Procedure, therefore, the provisions of Section 7 (15) would not be applicable to an application filed under Order XXII of Civil Procedure Code, for bringing on record the legal heirs.

5. I have heard all the counsel, and with their assistance I have gone through the contents of the Interim Application.

6. The Original Petitioner, was a defendant in the eviction suit filed under the Maharashtra Rent Control Act. The said defendant suffered a eviction decree in the Trial Court. An appeal filed against the eviction decree was also dismissed.

7. Hence, Writ Petition was filed by tenant challenging the concurrent findings recorded by both the courts. The Writ Petition was 'admitted' by this Court. During the pendency of the Writ Petition for hearing, the Petitioner / tenant, died. Hence, an application is filed under the provisions of Order XXII of Civil Procedure Code, to bring on record the Legal Heirs of the deceased tenants.

8. It is necessary to consider the Maharashtra Rent Control Rules, 2017. Chapter V deals with Procedure to be followed by the Court in Suits, Proceedings, Application, Appeals etc. Rule 8, reads as under :

CHAPTER V

8. Procedure for suits, appeals, miscellaneous applications and proceedings.—

(1) In all suits, appeals, miscellaneous applications, revisions and proceedings, the courts having

jurisdiction under section 33, shall as far as possible and except as herein otherwise provided, follow the procedure prescribed by the Code as applicable to the State of Maharashtra. The costs in respect of employing a legal practitioner when allowed in any such application under the Act shall not be more than Rs. 10,000.

(2) In appeal under section 34 of the Act, the Court shall follow, as far as may be and with the necessary modification, the practice and procedure prescribed for appeals from original decrees by the Code :

Provided that, if, in any such appeal, the bench constituting of two judges in Small Causes Court may differ in its decision, the Chief Judge may constitute the bench of three Judges and the decision of majority shall prevail.

9. Hence, in a rent act proceedings, the procedure prescribed by Civil Procedure Code is to be followed.

10. In my view after the death of Original defendant / Petitioner, the Interim Application, to bring on record all the legal heirs under the provisions of Order XXII of Civil Procedure Code is indeed correctly filed. I do not accept the Respondent's Counsel's submission that only proposed Petitioner No. 1 (D), should be brought on record. The judgment of Single Judge of this Court in **Vasant Joshi (Supra)** is on a complete different footing. As in the said judgment at the time of final hearing of Writ Petition, it was

considered as to who should be the 'tenant' after the death of original tenant. It was not a case where the application to bring on record the L.R.'s of deceased tenant was considered.

11. In a given case, not only the legal representatives of deceased tenant, but also those person/party whose presence is necessary for a complete and effectual adjudication of all questions in the suit, even though such a person/party may be described as a intervenor, may be joined in the proceedings.

12. Hence, I am satisfied that a case is made out to allow this Interim Application since the Application is preferred under the provisions of Order XXII of the Code of Civil Procedure. Interim Application is allowed in terms of prayer clause (A)(B) and (C).

13. Amendment to be carried out within four weeks from today. At this stage, Mr. Kantawala seeks stay to the implementation of this order. Mr. Chavan has opposed his application. Request of Mr. Kantawala is rejected.

INTERIM APPLICATION NO.1626 OF 2023

1. This Interim Application be placed on board on 30 April 2024. The matter to come up on “Supplementary Board”.

(RAJESH S. PATIL, J.)