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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

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WRIT PETITION NO.12154 OF 2023

Dr.Anjali B. Halgekar ...Petitioner

V/s.

Pinky (Pinks) A. Makhanian & Anr. ...Respondents

Mr.Yahya Ghogari with Mr.Mustafa Shabbir Shamim,
Ms.Pratiksha Vichare i/b Shamim & Co. for the Petitioner.

Mr.P.M. Rustomkhan for the Respondents.

CORAM : RAJESH S. PATIL, J.

DATE : 5TH MARCH, 2024.

P.C. :-

1. Rule. By consent Rule is made returnable forthwith.

The matter is taken up for hearing and final disposal.

2. This Writ Petition challenges the legality and validity of the impugned order dated 17 July 2023 passed by the Appellate Bench of the Court of Small Causes, Mumbai, in Revision Application No.267 of 2022. By the impugned order the Division Bench of the Court of Small Causes, Mumbai quashed

and set aside the order dated 15 September 2022.

3. Mr. Ghogari appearing for the Petitioner (original landlord) submitted that the eviction suit was admittedly filed only against the original tenant of the premises being two rooms on the first floor of Rane Niwas, 734/735, Road No.4, Dadar Parsi Colony, Mumbai (for short “the suit premises”). The eviction suit was filed under the Maharashtra Rent Control Act before the Court of Small Causes, Mumbai on grounds of *bona-fide* requirement and arrears of rent.

4. The suit was filed against the original tenant in September 2010. During the pendency of the suit, the original tenant died, therefore, as per the provisions of Order XXII of the Code of Civil Procedure, application was made to bring on record the legal heirs of the original tenant i.e. the daughter of the original tenant one Ms.Pinky Adil Makhania. The said application of the landlord was opposed by the proposed legal heir of Pinky Adil Makhania. After hearing both the parties, the Trial Court has allowed the application of the Landlord thereby allowing Pinky Adil Makhania to be brought on record as the only legal

heir of the deceased Tenant by its order dated 26 October 2021. Thereafter according to him, the application was made by the grand-son of the original Tenant to bring him on record under the provisions of Order I Rule 10 of the Code of Civil Procedure. The said application by a reasoned order, was dismissed by the Trial Court. However, the Appellate Bench of the Court of Small Causes without considering the legal provisions, has allowed the Revision filed by the grand-son of the original Tenant. Therefore, the present Writ Petition has been filed.

5. Mr.Rustomkhan appearing on behalf of the Respondent made his submissions. Mr.Rustomkhan submitted that it is only the Respondent No.2, who is the grand-son of the original Tenant, a proper and necessary party, as he has been residing with the original Tenant from the year 2000. He submits that what has to be seen is the provisions of Order I Rule 10 of the Code of Civil Procedure. He submits that it is necessary to take into consideration that the Applicant would be the proper and necessary party in order to decide the eviction suit filed by the Landlord. He submitted that in order to avoid multiplicity of

proceedings, it was necessary for the Landlord to bring on record the grand-son. He submitted that the Appellate Bench in the revision has taken all provisions into consideration and thereafter passed a reasoned order. He submitted that this Court in its jurisdiction under Article 227 of the Constitution of India should not disturb the findings of the Appellate Bench of the Court of Small Causes, Mumbai.

Analysis and Conclusion :-

6. I have heard the parties and have taken into consideration the documents which are brought on record, including the impugned order.

7. Admittedly, the suit was filed for eviction by the Landlord in the year 2010 on the grounds of “*bona-fide* requirement” and “arrears of rent” against the original tenant i.e. Mrs.Bunny Dara Daruwala. The said Mrs.Bunny Dara Daruwala had also filed the written statement after she was served with the summons, and thereafter issues were framed by the Trial Court. However, on 1 April 2020, the said Mrs.Bunny Dara Daruwala i.e. the original

Tenant died.

8. Thereafter the advocate appearing for the deceased Tenant in November 2020 filed a Pursis, under Order XXII Rule 10-A of the Code of Civil Procedure. The said Pursis communicated to the Court that the Defendant had expired on 1 April 2020. The said Pursis further stated that the Defendant had left behind her three persons as legal heirs, viz. (i) Pinky Adil Makhania (daughter of the original Tenant), (ii) Hormazd Adil Makhania (grand-son of the original Tenant) and (iii) Zarine Sammy Shroff (grand-daughter of the original Tenant). He further stated that Hormazd Adil Makhania, grand-son of the original Tenant was residing with the deceased Tenant since around the year 2000, as her family member, as contemplated under Section 7 (15)(d)(i) of the Maharashtra Rent Control Act, 1999.

9. On 27 October 2020, the Plaintiff filed an application to bring the legal heirs of the original deceased Tenant on record of the proceedings. By the said application, it was submitted that the daughter of the original Tenant i.e. Pinky Adil Makhania is

the only legal heir and she may be allowed to be brought on record as the legal heir of the original deceased Tenant. The said application for bringing on record the legal heir of the deceased Tenant was allowed by an order dated 26 October 2021.

10. Soon thereafter the grand-son of the deceased original Tenant preferred an application (Exhibit - 91), under the provisions of Order I Rule 10 of the Code of Civil Procedure and instructed the Plaintiff to also implead him as a party Defendant in the eviction suit. The said application filed by the grand-son of the original Tenant, was opposed by the Plaintiff / Landlord on the ground that such an application was not maintainable since the eviction suit was filed in the year 2010 and after the death of the original Tenant on 1 April 2020, the application was filed to bring on record the legal heir i.e. the daughter of the original Tenant on record. The said application was allowed and the plaint was accordingly amended. Therefore, the present application under the provisions of Order I Rule 10 of the Code of Civil Procedure is not at all maintainable.

11. The Trial Court by its order dated 15 September 2022,

rejected the application (Exhibit - 91) filed by the grand-son of the original Tenant on the ground that since the legal heir of the original Tenant, i.e. daughter (who is also the mother of the present Applicant) is already brought on record, there will be no need for the grand-son of the original Tenant to be brought on record since he is not class-I heir. It was also held in the impugned order that the Applicant will have to approach before the proper Forum to get such a relief as claimed by him and accordingly his application was rejected. The Applicant, who is the grand-son of the original Tenant thereafter approached the Revisional Court. The Revisional Court heard both the parties and by its impugned order date 14 July 2023 allowed the Revision and set-aside the order passed by the Trial Court and directed the Plaintiff to add the grand-son as a party Defendant in the suit.

12. In my view, the suit was filed in the year 2010 against the original Tenant. During the pendency of the suit, while the sole Defendant (Tenant) died on 1 April 2020, till such time, no application under the provisions of Order I Rule 10 of the Code

of Civil Procedure was preferred by the grand-son of the original Tenant. After the death of the original Tenant on 1 April 2020, the original Plaintiff (Landlord) preferred an application to bring on record the legal heir of the original Tenant i.e. the only daughter of the original Tenant, who also happens to be the mother of Respondent No.2. The daughter of the original Tenant was brought on record pursuant to an order dated 26 October 2021. After the application was filed by the Plaintiff to bring on record the only daughter of the original Tenant, the grand-son preferred an application to implead him as a party Defendant under the provisions of Order I Rule 10 of the Code of Civil Procedure. In my view, such an application is not maintainable, as the mother is already on record which represents the original Tenant and who has already filed the written statement. In order to bring on record the legal heirs in the pending suit an application is always filed under the provisions of Order XXII of the Code of Civil Procedure. Such exercise was made by the Plaintiff's and the Defendant's legal heir i.e. the daughter of the original Tenant was brought on record. Since the daughter of the

original Tenant is still alive, there is no question of the grand-son or the grand-daughter of original Tenant to be brought on record in the eviction proceedings. In my opinion, there is no merit in the arguments of Mr.Rustomkhan. I am not accepting the arguments of Respondent No.1.

13. The impugned order dated 14 July 2023 is quashed and set aside. The order passed by the Trial Court dated 15 September 2022 is hereby confirmed.

14. Rule is made absolute, accordingly, the Writ Petition stands allowed.

(RAJESH S. PATIL, J.)