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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

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WRIT PETITION NO.5976 OF 2024

Natwarlal S. Gada

..Petitioner

V/s.

Raghunath G. Deshmukh, since deceased
through His L.Rs. Vinay R. Deshmukh & Ors.

..Respondents

Mr.Pradeep Thorat with Mr.Jikesh Shah, Mr.Nishant Vyas and
Mr.Yagnesh Vyas for the Petitioner.

CORAM : RAJESH S. PATIL, J.

DATE : 23RD APRIL, 2024.

P.C. :-

1. This Writ Petition is filed by the original Defendant, challenging the order passed by Appellate Bench of the Court of Small Causes, Mumbai, thereby allowing the application filed on behalf of the landlord, seeking amendment to the plaint, and remanding the matter back from the Appellate Bench of the Court of Small Causes, Mumbai to the Trial Court so as to re-hear the matter after the parties filed their amended pleadings

and adduce evidence. Mr.Thorat appearing for the Petitioner submits that in the Trial Court, the ground of *bona-fide* requirement was raised by the Plaintiff, amongst other grounds for eviction. *Bona-fide* requirement ground in the Trial Court was as regards the requirement of the original Plaintiff one Mr.Raghunath Deshmukh. He submits that after the said suit was dismissed by the Trial Court, the said Mr.Raghunath Deshmukh filed an appeal before the Appellate Bench of the Court of Small Causes, Mumbai in the year 2017. As the Appeal proceeded further, unfortunately, on 24 July 2022, the said Mr.Raghunath Deshmukh died and he was substituted by his son Vinay Deshmukh. After the said Vinay Deshmukh came on record, he filed an application seeking amendment to the plaint and for remand of the matter back to the Trial Court on the ground that now the requirement is that of his wife and son. The said application was allowed, therefore, the present Writ Petition is filed. It appears that the Appellate Bench has come to a conclusion that in order to avoid multiplicity of proceedings, the amendment is required to be allowed and the parties to submit

the evidence before the Trial Court.

2. There is no doubt that the landlord can file any number of eviction suits. There is no bar on the Applicant to file eviction suit as far as the ground of *bona-fide* requirement is concerned. However, instead of filing the new suit for eviction, newly added Plaintiff decided to seek an order of remand from the Appellate Bench of the Court of Small Causes, Mumbai and to amend the plaint. According to me, such exercise has been done by the newly added Plaintiff only for the sole purpose to curtail time.

3. Issue notice to the Respondents, returnable on 8 June 2024. Apart from the Court notice, the Petitioner is permitted to serve the Respondents by advocate's private notice by all permissible modes of service and file affidavit of service before the returnable date.

4 In the meanwhile, there will be ad-interim relief in terms of prayer clause (b), till next date of hearing.

5. Prayer clause (b) of the Writ Petition reads as under :-

“(b). that pending the hearing and final

disposal of the present Writ Petition, this Hon'ble Court be pleased to stay the operation, implementation and effect of the Judgment and order dated 5th April, 2024 passed by the Appellate Bench of Small Causes Court, Mumbai in Exhibit "38" in (A-1) Appeal No.299 of 2017 in R.A.E. Suit No.102/152 of 2006."

(RAJESH S. PATIL, J.)