

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11447 OF 2017

Mohd. Rizwan Abdul Kadar	...Petitioner
<i>Versus</i>	
Abdul Haque Abdul Aziz And Anr.	...Respondents

**WITH
CIVIL APPLICATION IN WRIT PETITION NO.1444 OF 2019
IN
WRIT PETITION NO.11447 OF 2017**

Shamim Ahmed Abdul Hamid	...Applicants
Decd Through Lhr And Anr.	
<i>Versus</i>	
Mohammed Rizwan Abdul Kadar And Ors	...Respondents

**WITH
INTERIM APPLICATION NO.7017 OF 2024
IN
WRIT PETITION NO.11447 OF 2017**

Mohammed Rizwan Abdul Kadar	...Applicant
Abdul Haque Abdul Aziz And Ors.	...Respondents

**WITH
INTERIM APPLICATION (STAMP) NO.27093 OF 2025
IN
WRIT PETITION NO.11447 OF 2017**

Mohammed Rizwan Abdul Kadar	...Applicant
Abdul Haque Abdul Aziz And Ors	...Respondents

Ms. Jayshree P. Thakkar, for the Petitioner.

CORAM: MADHAV J. JAMDAR, J.
DATED : 12th NOVEMBER 2025

PC:-

1. Heard Ms. Thakkar, learned Counsel appearing for the Petitioner.
2. The Interim Applications are taken out to bring on record legal heirs of Deceased Respondent Nos. 1, 3, 4 and Deceased Respondent No.6.
3. All the Interim Applications are allowed.
4. Amendment be carried out within a period of 4 weeks from today.
5. The Interim Applications are disposed of in above terms with no order as to costs.
6. In this Writ Petition filed under Article 227 of the Constitution of India the challenge is to the legality and validity of order dated 22nd September 2017 passed by learned Appellate Bench of the Small Causes Court, Mumbai in Miscellaneous Appeal No.380 of 2016. In the

said Miscellaneous Appeal No.380 of 2016 the challenge was to the order dated 01st July 2014 passed by a learned Judge of the Small Causes Court, Mumbai below Exhibit-51 in L.E. & C. Suit No.45/58 of 2009. By the said order dated 01st July 2024 the learned Judge of the Small Causes Court, Mumbai has dismissed the suit for want of jurisdiction to entertain the same on the ground that subject matter is beyond the jurisdiction of the Court. The learned Appellate Court by the impugned order dated 22nd September 2017 passed following operative order, which reads as under :-

- “1. Misc. Appeal is allowed.*
- 2. The impugned order below Exh.51 passed in LE&C Suit No.45/58 of 2009 dismissing the suit is hereby set aside.*
- 3. The plaintiff is hereby intimated that this Court is of the opinion that the plaint should be returned to him for presentation in proper Court.*
- 4. The plaintiff to comply as per the provisions of Order VII, Rule 10A(2) of the Code of Civil Procedure on 26.09.2017.*
- 5. Further order to follow such compliance.”*

7. Thus, the learned Appellate Court has set aside the order dismissing the suit and returned back the plaint for presentation to the proper Court.

8. It is admitted position that, pursuant to said order dated 22nd September 2017 passed by the Appellate Bench of the Small Causes Court, Mumbai, the plaint has been presented to the City Civil Court, Mumbai being S.C. suit No.2479 of 2017.

9. It is the only contention of Ms. Thakkar, learned Counsel appearing for the Petitioner that, various contentions raised in the plaint are totally false. However, the Petitioner who is Defendant No.1 has right to file written statement and raise appropriate contentions. The only enquiry which is to be made in this proceeding is whether the Small Causes Court has jurisdiction to entertain the suit. The impugned order has been accepted by the Respondents i.e. Plaintiffs in L.E. and C. Suit No. 45/53 of 2009. Even it is the contention of the Petitioner that the Small Causes Court has no jurisdiction to deal

with the said Suit. However, it is the submission of Ms. Thakkar, learned Counsel of the Petitioner that instead of return of the Plaint, the Plaint should have been rejected.

10. As the Small Causes Court has no jurisdiction to deal with the dispute raised in the plaint, the Appellate Court, by exercising power under Order 7 Rule 10 has returned the plaint. The Order 7 Rule 10 reads as under :-

10. Return of plaint.—(1) [Subject to the provisions of rule 10A, the plaint shall] at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

[Explanation.— For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct after setting aside the decree passed in a suit, the return of the plaint under this sub-rule.]

(2) Procedure on returning plaint. —On returning a plaint, the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.

[10A. Power of Court to fix a date of appearance in the Court where plaint is to be filed after its return.—(1) Where, in any suit, after the defendant has appeared, the Court is of opinion that the plaint should be returned, it shall, before doing so, intimate its decision to the plaintiff.]

(2) Where an intimation is given to the plaintiff under sub-rule (1), the plaintiff may make an application to the Court—

(a) specifying the Court in which he proposes to present the plaint after its return,

(b) praying that the Court may fix a date for the appearance of the parties in the said Court, and

(c) requesting that the notice of the date so fixed may be given to him and to the defendant.

(3) Where an application is made by the plaintiff under sub-rule (2), the Court shall, before

returning the plaint and notwithstanding that the order for return of plaint was made by it on the ground that it has no jurisdiction to try the suit,—

(a) fix a date for the appearance of the parties in the Court in which the plaint is proposed to be presented, and

(b) give to the plaintiff and to the defendant notice of such date for appearance.

(4) Where the notice of the date for appearance is given under sub-rule (3),—

(a) it shall not be necessary for the Court in which the plaint is presented after its return, to serve the defendant with a summons for appearance in the suit, unless that Court, for reasons to be recorded, otherwise directs, and

(b) the said notice shall be deemed to be a summons for the appearance of the defendant in the Court in which the plaint is presented on the date so fixed by the Court by which the plaint was returned.

(5) Where the application made by the plaintiff under sub-rule (2) is allowed by the Court, the plaintiff shall not be entitled to appeal against the order returning the plaint.

[Emphasis added]

11. Thus, it is very clear that even the Appellate Court after setting aside the decree passed in a suit can return the plaint under sub-Rule 1 of Rule 10 of Order 7.

12. Ms. Thakkar, learned Counsel, states that the Plaint after return, has been presented in the City Civil Court, Mumbai and the Petitioner i.e. Defendant No.1 has appeared in the said City Civil Court suit and has also filed the written statement.

13. Accordingly, no interference is warranted in the impugned order under the jurisdiction of this Court under Article 227 of the Constitution of India.

14. The Writ Petition is disposed of in above terms with no order as to costs.

[MADHAV J. JAMDAR, J.]