

Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11680 OF 2025

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Sarfaraz Sharafali Furniturewalla

...Petitioner

Versus

Afshan Sharafali Asok Kumar & Ors.

...Respondents

Mr. Rustom Pardiwalla a/w Rushabh V. Thacker, for the Petitioner.

Mr. Suraj Shah a/w Mangesh R. Kokare i/b Zaid S. Ansari & Associates,
for Respondent Nos.1 & 2.

Mr. Manal Dhanani i/b CUE Legal, for Respondent No.5.

CORAM: MADHAV J. JAMDAR, J.
DATED: 18 NOVEMBER 2025

P.C.:

1. Heard Mr. Rustom Pardiwalla, learned Counsel appearing for the Petitioner, Mr. Suraj Shah, learned Counsel, appearing for Respondent Nos.1 and 2 and Mr. Dhanani, learned Counsel appearing for Respondent No.5.

2. By the present Writ Petition filed under Article 227 of the Constitution of India, the Petitioner is challenging the legality and validity of the Order dated 30th July 2025 passed by the learned Judge, Small Causes Court, Mumbai, below Exhibit-94 in RAD Suit No.372 of 2017 (“**impugned Order**”). The said Application bearing Exhibit-94 has been filed by Defendant No.2 seeking direction to the Plaintiffs and Defendant Nos.3 and 4 to produce certain documents. By the impugned

order the said application has been dismissed.

3. By the said Application bearing Exhibit-94, Defendant No.2 has *inter alia* sought the following documents :-

“a. Plaintiff No.1 be directed to produce Current/latest passports, voter id cards, driving licenses and aadhar cards of her husband, i.e. Ashok Nair and daughter Rhea Nair.

b. Plaintiff No.2 be directed to produce Current/latest passports, aadhar cards, driving licenses, voter ids of himself, his wife Rubi, daughter Alisha and son Adnan.

c. The Defendant No.3 be directed to produce her Current/latest documents i.e. passport, aadhar card, driving license, voter id.

d. The Defendant No.4, be directed to produce his Current/latest passport, driving license, voter id card, aadhar card, Income Tax returns of the last 10 years, together with the copies of the balance sheets and profit and loss accounts, duly certified as true copies by Defendant No.4 or his chartered accountant.

e. The Defendant No.4 be directed to provide the copies of his bank statements for the last 10 years, duly certified by the branch manager as true copies.”

4. It is the submission of the Petitioner who is Defendant No.2 that Defendant No.2 was staying in the suit premises and the Plaintiffs and Defendant Nos.3 and 4 have vacated the suit premises several years ago and therefore the said documents are relevant for deciding the RAD Suit. It is the submission of learned Counsel appearing for the Respondents that the said documents are not relevant for deciding the said RAD Suit and therefore the said documents are not necessary.

5. It is an admitted position that the landlord of the suit premises has entered into an agreement for alternate accommodation on 31st March 2017 with the Defendant No.2 and the subject premises have been vacated in 2023 and thereafter the suit building was demolished.

6. In this background of the matter, it is relevant to note the reasons given by the learned Judge of the Small Causes Court at Mumbai in Paragraph No.18 of the impugned Order, which reads as under :-

“18. Considering nature of the suit i.e. for declaration that plaintiffs and defendant nos. 3 & 4 are tenant in respect of suit premises and not for recovery of suit premises, prima facie I am of the view that these documents are not relevant to decide this suit. The plaintiffs and defendant nos. 3 & 4 have not produced said documents inspite of said application by the defendant no.2. At this stage, if the application is allowed, it unnecessarily enlarge scope of trial, which results into delay in the proceeding. The suit is time bound by the order of Hon’ble Bombay High Court, therefore, the court and parties are under obligation to try and decide this suit within given time. Therefore, parties are hereby directed to take necessary step to try and dispose of the suit within given time. Therefore, for the reasons stated above, the application is liable to be rejected.”

(Emphasis added)

Thus, the learned Trial Court has held that as the Suit is for declaration that Plaintiffs and Defendant Nos.3 and 4 be declared as tenants in respect of the suit premises and not for recovery of the suit premises, the above documents are not relevant. At this stage only, it is required to be noted that the Defendant No.2 is also claiming to be the

tenant.

7. For examining the correctness of the reasons given by the learned Trial Court, it is necessary to consider the definition of “tenant” as defined under Section 7(15) of the *Maharashtra Rent Control Act, 1999* (**Rent Act**). The said provision reads as under :-

“7. Definitions.— In this Act, unless there is anything repugnant to the subject or context,—

...

(15) “tenant” means any person by whom or on whose account rent is payable for any premises and includes,—

(b) a person who is deemed to be a tenant under section 25;

(d) in relation to any premises, when the tenant dies, whether the death occurred before or after the commencement of this Act, any member of the tenant’s family, who,—

(i) where they are let for residence, is residing, or

(ii) where they are let for education, business, trade or storage, is using the premises for any such purpose,

with the tenant at the time of his death, or in the absence of such member, any heir of the deceased tenant, as may be decided, in the absence of agreement by, the court.

Explanation.— The provisions of this clause for transmission of tenancy shall not be restricted to the death of the original tenant, but shall apply even on the death of any subsequent tenant, who becomes tenant under these provisions on the death of the last preceding tenant.”

(Emphasis added)

8. Thus, it is clear that as per the definition of “tenant” when the

tenant dies, whether the death occurred before or after the commencement of this Act, any member of the tenant's family, who, where they are let for residence, is residing, with the tenant at the time of his death, or in the absence of such member, any heir of the deceased tenant, as may be decided, in the absence of agreement by, the court is the tenant. Explanation to Sub-Section (15) of Section 7 provides that the provisions of this clause for transmission of tenancy shall not be restricted to the death of the original tenant, but shall apply even on the death of any subsequent tenant, who becomes tenant under these provisions on the death of the last preceding tenant.

9. Thus, if there is disagreement between the members of the tenant's family who were residing with the tenant at the time of his death or in the absence of such member any disagreement between the heirs of the deceased tenant, then in that case it is for the Court to decide to whom the tenancy is to be transmitted. For deciding the same, several factors are required to be considered including who is in occupation of the premises. The documents which the Petitioner-Defendant No.2 has sought may be relevant in the context of Section 7(15) of the Rent Act. As the suit is for declaration of tenancy the said documents are relevant.

10. Accordingly, the relevant factors have not been taken into consideration by the learned Judge of the Small Causes Court at

Mumbai and also ingredients of Sub-section (15) of Section 7 of the Rent Act are ignored by the learned Judge while passing the impugned Order dated 30th July 2025.

11. For the above reasons, the impugned Order dated 30th July 2025 passed by the learned Judge, Small Causes Court, Mumbai below Exhibit-94 in RAD Suit No.372 of 2017 is quashed and set aside. The learned Judge, Small Causes Court, Mumbai, shall decide the said Application bearing Exhibit-94 in RAD Suit No.372 of 2017 afresh.

12. The contentions of all the parties to be agitated before the learned Judge of the Small Causes Court at Mumbai in said Application bearing Exhibit-94 in RAD Suit No.372 of 2017 are expressly kept open.

13. Accordingly, the Writ Petition is disposed of in above terms with no order as to costs.

[MADHAV J. JAMDAR, J.]