

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2964 OF 2026

Mrs. Afshan SharafAli Ashok Kumar
& Anr.

] **PETITIONER**

: VERSUS :

Mr. Sarfaraz Ali Sharafali Furniturewalla
& Ors.

] **RESPONDENTS**

Mr. Drupad S. Patil with Mr. Zaid S. Ansari and Mr. Mangesh R. Kokane
i/b. Mr. Zaid S. Ansari & Associates, for the Petitioner.

Mr. Rustom Pardiwalla with Mr. Rushabh Thakkar, for Respondent
No.1.

Mr. Manal Dhani i/b. Cue Legal, for Respondent No.2.

CORAM : SANDEEP V. MARNE, J.

DATED : 9 MARCH 2026.

P.C. :

1) The petition challenges order dated 7 January 2026 passed by the Learned Judge, Small Causes Court, allowing Application at Exh.94 filed by Defendant No.2 and directing Plaintiff Nos.1 and 2 and Defendant Nos.3 and 4 to produce various documents as enumerated in the operative part of the order.

2) I have heard Mr. Patil, the learned counsel appearing for the Petitioners, Mr. Pardiwalla, the learned counsel appearing for Respondent

No.1 and Mr. Dhanani, the learned counsel appearing for Respondent No.2.

3) Plaintiff's Suit is for declaration of tenancy in respect of the suit premises. The original tenant was Mr. Sharafali who passed away on 2 April 1966. It is the case of the Plaintiffs that they resided alongwith Mr. Sharafali in the suit premises at the time of his death on 2 April 1966. It is Mr. Pardiwalla's contention that the residence of the family members at the time of death of the original tenant is the relevant factor and subsequent residence at the time of filing of the suit is a factor irrelevant to the decision of a declaratory suit. On the other hand, it is the contention of Defendant No.2 that Plaintiffs and Defendant Nos.3 and 4 are long since residing at different addresses for over two decades before filing of the Suit. Thus, to prove this contention of Defendant no.1, various documents of Plaintiffs and Defendant Nos.3 and 4 were sought to be produced by way of application at Exh.94. The application at Exh.94 was earlier rejected by the Small Causes Court by order dated 30 July 2025 which became subject matter of challenge by Defendant No.2 in Writ Petition No.11680 of 2025. This Court remanded the application at Exh.94 for fresh consideration and decision by order dated 18 November 2025. Paras-8 and 9 of the order reads thus :

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.

4) No doubt, this Court kept open all contentions of the parties while fresh decision of the application at Exh.94. However, this Court did make observations that the documents which Defendant No.2 sought can be relevant in the context of the provisions of Section 7(15) of the Maharashtra Rent Act Control Act, 1999.

5) Be that as it may. In my view, Defendant No.2 has taken a defence that Plaintiffs and Defendant Nos.3 and 4 did not reside in the suit property for a considerable period of time before filing of the Suit. To prove this defence, Defendant No.2 has sought production of various documents relating to residence of Plaintiffs and Defendant Nos.3 and 4. It is the case of the Plaintiffs that residence at the time of filing of the suit is an altogether irrelevant factor for deciding the issue of transmission of tenancy rights. As of now, the Court has not decided the exact date relevant for deciding the issue of transmission of tenancy rights. All that is done by the Court is to direct Plaintiffs and Defendant Nos.3 and 4 to produce the documents. It would be open for the Plaintiffs and

Defendant Nos.3 and 4 to produce the documents directed vide order dated 7 January 2026. If Plaintiff and Defendant Nos.3 and 4 fail to produce the documents, the Trial Court would proceed to draw adverse inference against them. Since Defendant No.2 has sought production of documents to prove this defence, the Court cannot direct dismissal of the Suit on account of non-production of the documents. In any case, it would be open to the Plaintiffs to contend before the trial court that their residence at the time of filing of the Suit is irrelevant and that the issue of transfer of tenancy rights needs to be decided on the basis of residence of the parties as on the date of death of the original tenant on 2 April 1966.

6) In view of the above observations, I do not find any reason to interfere in the order dated 7 January 2026. Leaving open all contentions of the parties about relevancy of documents directed to be produced by the order dated 7 January 2026, the Writ Petition is **disposed of**.

[SANDEEP V. MARNE, J.]

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