

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4351 OF 2026

Anjum Faize Shabbir & Ors.

... Petitioners

V/s.

Gorgina alias Jeena alias Jeane

...Respondent

Mr. Karl Tamboly *a/w. Ms. Fatema Kachwalla, Mr. Virgil Braganza and Mr. Mustafa Hussain Abbas i/b. JSA, for the Petitioner.*

Ms. Eventa A. Gonsalves *with Mr. Reyden L. Gonsalves, for the Respondent.*

CORAM: SANDEEP V. MARNE, J.

DATED: 23 April 2026.

P.C.:

1) The petition challenges order dated 30 January 2026 passed by the Appellate Bench of the Small Causes Court dismissing Revision Application No.73 of 2025 and confirming the order dated 28 June 2023 passed on application at Exh.14 in respect of which application for review has been rejected on 22 March 2024.

2) I have heard Mr. Tamboly, learned Counsel appearing for the Petitioner and Ms. Gonsalves, learned Counsel appearing for the Respondent.

3) The Suit is instituted by Plaintiff No.1-Trust. Petitioner No.6 is the sole trustee in respect of Plaintiff No.1-Trust. Instead of impleading Petitioner No.6 in his individual capacity as the Plaintiff in the Suit, it appears that his delegate attorneys, being Plaintiff Nos.2 to 5 are impleaded as Plaintiffs to the Suit. Since the sole trustee of the Trust is not directly a Plaintiff in the Suit, it appears that an objection is raised on behalf of the Defendant questioning maintainability of the Suit. This prompted Plaintiff No.3 to move application at Exh.14 for amendment of the plaint.

4) As the hearing of the petition progressed, it is seen that the Plaintiffs merely desired to remove any formal defect in the Suit on account of non-impleadment of the sole trustee of the Trust. This could also have been achieved by filing an application under Order 1 Rule 10 of the Civil Procedure Code, 1908. Under that provision, the Court has ample power to direct impleadment of correct party in the event it is found that the Suit is instituted in the name of a wrong person. Therefore, instead of determining the correctness of the impugned orders, it would be appropriate to grant opportunity to the Plaintiffs to apply to the Trial Court for impleadment of Petitioner No.6 as Plaintiff in the Suit. So far as authority of Plaintiff No.3 to file pleadings on behalf of Petitioner No.6 is concerned, my attention is invited to the General Power of Attorney executed by Petitioner No.6 under which he has appointed Mr. Husain Burhanuddin (alias Husain Mufaddal Saifuddin) as his Constituted Attorney. The Power of Attorney contains Clause-18 as under :

18. To appoint such person or persons as the said Attorneys may deem fit as substitute/s in the course of carrying out the purposes set out under these presents delegating to such substitute/s specific powers for specific

term not exceeding the term of these presents as 'the said Attorneys' shall deem fit and proper.

5) In pursuance of power conferred on Mr. Husain Burhanuddin (alias Husain Mufaddal Saifuddin), a Special Power of Attorney is executed by Mr. Husain Burhanuddin appointing following persons as the delegated attorneys of Petitioner No.6 :

1. Mustansir Abdulla Lokhandwala
2. Hakimuddin Mister
3. Ismal Ebrahim Saify
4. Juzer Asgar Chahwala

6) Thus, Plaintiff No.3 has the delegated authority to act on behalf of Petitioner No.6 by virtue of Power of Attorney and Special Power of Attorney referred to above. In my view therefore, the objection to the authority of Plaintiff No.3 to act on behalf of Petitioner No.6 does not appear to be well founded.

7) Considering the peculiar facts of the case, in my view, it would be appropriate for Petitioner No.6 to file an application either by himself or through Constituted Attorney or through delegated Constituted Attorney for his impleadment as Plaintiff in the Suit. Mr. Tamboly submits that an application shall be filed within a period of 2 weeks. If such application is filed, the Trial Court shall proceed to decide the same as expeditiously as possible preferably by 30 June 2026. With the above observations, the Writ Petition is **disposed of**.

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[SANDEEP V. MARNE, J.]