IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5719 OF 2025

Mahe Alam Mehboob Ahmed Shaikh,
Age-66 years, Occupation-Business,
Carrying on business in the firm name & style
M/s. M. A. Enterprises from Shop No. 4,
Ground Floor, 15/19, Ismail Building,
Sutra Chawl, New Cutlery Market,
Mumbai-400 002 as its sole proprietor.

**...PETITIONER/
(ORIG. RESPONDENT/
PLAINTIFF)**

Versus

1. **Mr. Sabir Yasin Nirban**,
   Age-59 years, Occupation-Business.
2. **Mrs. Naseem Sabir Nirban**,
   Age-53 years, Occupation-Business.

Both Indian Inhabitants of Mumbai,
Having their office at 292,
Abdul Rehman Street, 2nd Floor,
Mumbai-400 003.

**...RESPONDENTS/
(ORIG. PETITIONERS/
DEFENDANTS)**

Ms. Vrushali Uday Kabare, *Advocate for the Petitioner.*

Mr. Ranjeev Carvalho a/w Mr. Rishab Murali and Mr. P. J. Ramchandani, *Advocates for the Respondents.*

CORAM : ARUN R. PEDNEKER, J.

RESERVED ON : 15th JUNE, 2026.
PRONOUNCED ON : 1st JULY, 2026.

JUDGMENT :

1. Heard Ms. Vrushali Kabare, learned Advocate for the Petitioner and Mr. Ranjeev Carvalho, learned Advocate for the Respondents.

2. Rule. Rule made returnable forthwith and by consent of the parties heard finally.

3. By the present Petition, the Petitioner is challenging the judgement and order passed by the Small Causes Court at Mumbai (Appellate Bench) in Revision Application No. 290 of 2024, whereby the Appellate Court was pleased to set aside the judgment and order passed by the Small Causes Court and thereby allowed the Application of Defendants/Respondents filed under Order VII, Rule 11 of the Code of Civil Procedure, 1908 ("**CPC**"), dismissing the Suit

filed by the Plaintiff/Petitioner by holding that the Suit to be barred by limitation.

4. The facts in brief giving rise to the present Petition are that the Respondents-original Landlords had filed an earlier Suit against the Petitioner and his brother seeking eviction in the year 2012 being Civil Suit bearing R.A.E. & R. Suit No. 247/401 of 2012 and the Suit was unconditionally withdrawn on 21st March, 2024. It is stated by the Petitioner that during pendency of the Civil Suit bearing R.A.E. & R. Suit No. 247/401 of 2012, the building in which the suit premises were occupied by the Petitioner and his brother, caught fire and all shops including the suit premises were destroyed in the said fire on 4th October, 2020. The Respondents thereafter obtained NOC from the MHADA and the MCGM for repair and reconstruction of the Ismail building, wherein the suit property is situated. The said building was reconstructed in the year 2023 and although the Petitioner requested Respondent Nos. 1 and 2 to handover the property, the same was declined, as such the present Suit bearing R.A.D. Suit No. 47 of 2024 was filed in the Small Causes Court.

5. Respondent Nos. 1 and 2 filed Application at Exhibit-15 under Order VII, Rule 11 of CPC for rejection of the Plaint in R.A.D. Suit No. 47 of 2024. The said Application was opposed by the Petitioner. The Trial Court rejected the Application under Order VII, Rule 11 of CPC filed by the Respondents-Defendants in Civil R.A.D. Suit No. 47 of 2024. Revision Application No. 290 of 2024 filed before the Revisional Court was allowed and the Suit was dismissed on the ground of delay. The Revisional Court at paragraph no. 27 has particularly observed that the Suit filed by the Defendants i.e. R.A.E. & R. Suit No. 247/401 of 2012 was pending from the year 2012 and the Petitioner has filed this Suit for declaration of tenancy in the year 2023, i.e. on 21st June, 2023 and as such, the Suit is barred by limitation.

6. Learned counsel appearing for the Petitioner submits that the Suit has to be read as a whole and that the cause of action to file the Suit arose, only after Ismail Building caught fire and was destroyed in the year 2020 and the suit building was reconstructed by the Defendants/Respondent Nos. 1 and 2 in the year 2023 and the

possession was not handed over to the Petitioners/Plaintiffs. Hence, the Suit was filed and the same is within limitation.

7. It is further submitted by the Petitioner that the civil R.A.D. Suit No. 47 of 2024 cannot be said to be barred by limitation, as admittedly the Respondents filed the Suit in the year 2012 against the Petitioner and another for eviction and the same has been withdrawn in the year 2024 and by withdrawal of the Suit, the Petitioner's tenancy over the suit property stands admitted.

8. Merely by observing that the said Suit i.e. R.A.E. & R. Suit No. 247/401 of 2012 was inadvertently filed against Defendant No. 2 i.e. the present Petitioner, cannot absolve the Plaintiff in R.A.E. & R. Suit No. 247/401 of 2012 of the statements made in the Plaint that the Defendant is in possession of the suit property and the Plaintiff had sought eviction of the Defendant.

9. In the year 2020, the Ismail Building caught fire and the suit property was destroyed. In the year 2023, when the suit property was not delivered to the Petitioner, the cause of action to

file the Suit for declaration arose and did not arise in the year 2012, as admittedly the Petitioner was in possession of the suit property.

10. *Per contra*, learned counsel appearing for the Respondents submits that the Petitioner ought to have filed the counter-claim in the Suit filed by the Respondents in the year 2012 seeking declaration of the tenancy. Learned counsel submits that the present Suit filed is clearly barred by limitation. It is further submitted that in the said Suit filed against the Petitioner, the Respondents had clearly denied that the present Petitioner is the tenant of suit property.

11. Having considered the rival submissions, it is to be noted that the Suit filed by the Respondents bearing R.A.E. & R. Suit No. 247/401 of 2012 was contested by the present Petitioner and the said Suit was withdrawn by the Respondents. The consequences of withdrawal of the Suit R.A.E. & R. Suit No. 247/401 of 2012 are that the Petitioner's possession as a tenant of the premises stands confirmed. As pleaded in the Plaint of Civil R.A.D. Suit No. 47 of 2024 that the suit premises were destroyed by fire in the year 2020

and reconstructed in the year 2023, it was incumbent upon the Respondents to restore the possession of property. On the basis of bare pleadings of the Civil R.A.D. Suit No. 47 of 2024, it reveals that the possession of the suit premises was taken over by the Respondents in the year 2020 after fire and the permission was granted to reconstruct Ismail Building and the said building was reconstructed. Upon reconstruction, the possession of tenanted premises or alternative reconstructed premises ought to have been handed over by the Defendants, but the Respondents failed and thus, the cause of action arose to file the Suit in the year 2023.

12. The Plaint has to be read as a whole. On the bare reading of the Plaint, this Court is of the view that it is not barred by limitation. The Hon'ble Supreme Court in the case of ***Srihari Hanumandas Totala v/s. Hemant Vithal Kamat and Others*** [1]has observed in paragraph nos. 19 & 20 as under :-

> "*19. In a more recent decision of this Court in Shakti Bhog Food Industries Ltd. v. Central Bank of India and Another, a three Judge bench of this Court, speaking though Justice AM Khanwilkar, was dealing with the rejection of a plaint under*

[1] (2021)9 SCC 99.

Order 7 Rule 11 by the Trial Court, on the ground that it was barred by limitation. The Court referred to the earlier decisions including in Saleem Bhai v. State of Maharashtra MANU/SC/1185/2002 : (2003)1 SCC 557, Church of Christ Charitable Trust (supra), and observed that

> *"18. It is clear that in order to consider Order 7 Rule 11, the court has to look into the averments in the plaint and the same can be exercised by the trial court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinize the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averment. These principles have been reiterated in Raptakos Brett & Co. Ltd. v. Ganesh Property, MANU/SC/0595/1998 : (1998) 7 SCC 184 and Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express, MANU/SC/8083/2006 : (2006) 3 SCC 100."*

20. On a perusal of the above authorities, the guiding principles for deciding an application under Order 7 Rule 11(d) can be summarized as follows:

(i) To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to;

(ii) The defense made by the defendant in the suit must not be considered while deciding the merits of the application;

(iii) To determine whether a suit is barred by res judicata, it is necessary that (i) the 'previous suit' is decided, (ii) the issues in the subsequent suit were directly and substantially in issue in the former suit; (iii) the former suit was between the same

parties or parties through whom they claim, litigating under the same title; and (iv) that these issues were adjudicated and finally decided by a court competent to try the subsequent suit; and

(iv) Since an adjudication of the plea of res judicata requires consideration of the pleadings, issues and decision in the 'previous suit', such a plea will be beyond the scope of Order 7 Rule 11 (d), where only the statements in the plaint will have to be perused."

13. To decide a question of limitation under Order VII, Rule 11 of CPC, one has to merely see the pleading in the Plaint. It is to be seen that on 27th September, 2011, the Defendants had terminated the tenancy and prayed eviction of the Petitioner and demanded the arrears of rent. The civil Suit i.e. R.A.E. & R. Suit No. 247/401 of 2012 was defended by the Petitioner. The termination of tenancy was done way back in the year 2011, however, the Suit itself is dismissed as withdrawn against the Respondents.

14. The effect of withdrawal of the civil Suit R.A.E. & R. Suit No. 247/401 of 2012 is that there is no valid termination of tenancy. The Plaintiff has clearly stated that the cause of action to file Civil R.A.D. Suit No. 47 of 2024 arose in the year 2023. The cause of

action has arose in the year 2023 and not in the year 2012. Consequently, the impugned order is set aside and the Suit is restored to its original position to be decided in accordance with law. All findings are *prima-facie* and limited only for the disposal of this Petition and the Suit to be decided on its own merits.

15. Rule made absolute in the above terms. No order as to costs.

[ARUN R. PEDNEKER, J.]

GITALAXMI KRISHNA KOTAWADEKAR
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