IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO. 9267 OF 2019
IN
REVISION APPLICATION NO. 343 OF 2018
IN
EXHIBIT NO. 28
IN
R.A.E. SUIT NO. 119/171 OF 2011

Mrs. Madhuri Doulatram Choitram @ Janu w/o Pishu Hathiramani, Age : 50 years, Resident of Flat No. 16, 5th Floor, "Shiv Sadan", situated at C Road, (Marine Drive), Mumbai 400 020. .. Petitioner

Versus

1. Lachmandas Tulsiram Nayar (HUF) by and through its Karta and Manager
   Mr. Brijbehari Lachmandas Nayar, (since deceased)
   Age : 83 years, Occ : Retired,
   Residing at Flat No. 12, 5th Floor, St. James Court, Marine Drive, Mumbai.

2. Mrs. Elizabeth Mrary J. Nayar
   Age __ years, Occ. : Retired

3. Mrs. Anita Nayar
   Age __ years, Occ. Retired.

4. Mrs. Anjali Nayar Hood,
   Age : 58 years, Occ. Service,
   all residing at Flat No. 18, 6th Floor, "Shiv Sadan", situated at C Road, Netaji Subhash Chandra

Respondents

Road, (Marine Drive),]
Mumbai 400 020.]

5. Mr. Mohan Doulatram Choitram,]
Age : Adult, Occ. Business,]
Residing at : 20, San Talmo,]
Canary Island, Santa Cruz De]
Tanerife, Spain,]
also having addresss at Flat No.]
16, "Shiv Sadan", situated at C]
road, Netaji Subhash Chandra]
Road, (Marine Drive)]
Mumbai 400 020.].. Respondents

Mr.Yashpal Jain a/w. Ms.Smita Chaudhary, Adv.Mitchelle Almeida, Mr.Ajay More, Ms. Aditi Harash i/by. M/s.Haresh Jagtiani and Associates for petitioner.

Ms.Anita Castellino i/by. Bruno Castellino for respondent No.1.

Mr.Mayur Khandeparkar a/w. Mr. Rahul C. Mestry and Ms.Dhwani Shah for respondent Nos.2, 3 and 4.

CORAM : N.J. JAMADAR, J.
Reserved on : 25th September, 2019
Pronounced on : 18th December 2019

JUDGMENT :

1. This petition under article 227 of the Constitution of India assails the legality, propriety and correctness of the judgment and order dated 12th April 2019 in Revision Application No. 343 of 2018 passed by the Appellate Bench of the Court of Small Causes, Bombay, whereby the revision application preferred by the petitioner against an order passed by the learned Judge, Court of Small Causes, Bombay on

an application for dismissal of the suit (Exh.28) in RAE Suit No. 119/171/2011 dated 2nd April 2018, came to be dismissed.

2. The background facts leading to this petition can be stated in brief, as under :-

(a) The respondent No.1-Lachmandas Tulsiram Nayar (HUF) had instituted a suit, being RAE Suit No. 660/1127/2002, against the predecessor-in-title of the petitioner and respondent No.5 for recovery of the possession of the demised premises on the ground of personal bonafide requirement and non-user. The said suit came to be dismissed by a judgment and order dated 27th February 2009.

(b) Thereafter, respondent No.1 again instituted a suit, being RAE Suit No. 119/171/2011, against the petitioner and respondent No.5 on the ground of personal bonafide requirement and alleged sub-letting. The suit was instituted by the HUF through its Karta and Manager Mr.Brijbihari Tulsiram Nayar. Mr. Jagdishmohan Tulsiram Nayar was also arrayed as the plaintiff, with an assertion that the latter was

assisting the Karta and Manager in managing the affairs of the said HUF.

(c) Jagdishmohan Lachmandas Nayar; plaintiff No.2, died on 23rd February 2014. The respondent Nos. 2 to 4 herein, claiming to be the legal representatives of the deceased plaintiff No.2, sought their impleadment. The learned Judge, by an order dated 16th September 2016, was persuaded to allow the application and implead the respondent Nos. 2 to 4 as the legal representatives of the deceased plaintiff No.2. The petitioner challenged the said order in Writ Petition No. 557 of 2017.

(d) In the meanwhile, Mr.Brijmohan Lachmandas Nayar, the Karta and Manager of HUF also died on 1st July 2015. Since the successor Karta and Manager of Lachmandas Tulsiram Nayar (HUF) was not impleaded in the suit, the petitioner-defendant filed an application for dismissal of the suit as abated, and, in the alternative, qua the plaintiff No.1 HUF, as there was no Karta to represent the said HUF. The respondent Nos.2 to 4, in the capacity of the legal representatives of the deceased plaintiff No.2, resisted the

application.

(e) By an order dated 2nd April 2018, the learned Judge was persuaded to reject the application holding, *inter-alia,* that the legal representatives of the deceased plaintiff No.2 were already brought on record and, thus, the suit would not abate on account of the death of Karta and Manager of HUF despite the successor Karta of the HUF not being brought on record.

3. The petitioner carried the matter in revision before the Appellate Bench. By the impugned judgment and order, the Appellate Bench was persuaded to reject the application. The observations in paragraph 7 of the impugned judgment spell out the reasons which weighed with the Appellate Bench to repel the contention of the petitioner. As a severe criticism was advanced against those observations, it would be advantageous to extract paragraph No.7 of the impugned judgment. It reads as under :-

> *"7 It is pertinent to note here that the plaintiffs have already brought the legal heirs and representatives of the plaintiff No.2 namely Jagdish Mohan Lachmandas Nayar on record by virtue of the order below the application exh.19 Dt. 16.09.2016. However, we do not find any mandatory or*

> *compulsory provisions which compel the plaintiffs to appoint or bring the Karta of the Hindu Undivided Family (HUF) on record but the other plaintiffs have rightly represented and protect the rights of the concern parties including the suit premises for themselves and others. Moreover, the order passed by the Appellate Court below the application Exh.33 in Appeal No. 306 of 2009 dt. 27.01.2016 is permissive in nature and not the directive by which there is no reason to say that the plaintiffs have not followed the order passed by the Appellate Court below the application Exh.33 in Appeal No.306 of 2009 Dt.27.01.2016. Per contra, it is the sweet choice or option of the plaintiffs being the members of the HUF that they may or may not elect or select or appoint the new Karta in place of the deceased Karta or continue their family without any Karta."*
>
> (Underline supplied)

4. Shri Yashpal Jain, the learned counsel for the petitioner urged that the view of the Appellate Bench that there is no mandatory or compulsory provision which would compel the plaintiffs to appoint and bring the Karta of Hindu Undivided Family (HUF) on record and that the plaintiff Nos.2(A) to 2(C) can represent the HUF, is plainly erroneous. The further observations of the Appellate Bench that it is the sweet choice or option of the plaintiffs, being the members of HUF, to appoint the new Karta in place of the deceased Karta or continue their family without any Karta, is also manifestly in dissonance with the settled legal position which governs the

representation of a HUF in the proceedings instituted by or on behalf of HUF and the express provisions contained in Order XXX Rule 10 of the Code of Civil Procedure, 1908 ('the Code'). The Appellate Bench, according to the learned counsel for the petitioner, totally misconstrued the nature of the HUF and dismissed the application without adverting to the questions which arose for determination in the backdrop of the governing statutory provisions and binding precedents. Thus, the impugned judgment and order, being wholly untenable, deserves to be quashed and set aside, and in the absence of the successor Karta being brought on record, the suit itself is liable to be dismissed, urged Shri Jain.

5. In opposition to this, Shri Mayur Khandeparkar, the learned counsel for the respondent Nos.2 to 4 would urge that neither the impugned order nor the order passed by the learned Judge on 12th April 2019 dismissing the application for dismissal of the suit filed by the petitioner warrant any interference. Indisputably, the respondent Nos.2 to 4 have already been brought on record pursuant to the order passed on the application (Exh.19) by the learned Judge on 16th September 2016. The fact that the said order is assailed in Writ Petition No.557 of 2017 before this Court does not impinge upon the

right of the respondent Nos.2 to 4 to prosecute the suit. As the respondent Nos.2 to 4 are, incontestably, the co-owners of the demised premises, the continuation of the suit by respondent Nos. 2 to 4 for eviction of the tenants cannot be questioned. The non-impleadment of successor Karta, for any reason, thus, does not impair the tenability of the suit, urged Shri Khandeparkar.

6. To begin with, it is necessary to note the nature of the proceeding, which has a determinative bearing on the right to sue. Undoubtedly, the suit has been instituted for eviction of the tenants from the demised premises on the statutory grounds provided in section 16 of the Maharashtra Rent Control Act, 1999 ('The Act'). It is well neigh settled that one co-owner, in the absence of any objection from the other co-owners, can maintain an action for eviction against a tenant, without impleading all the co-owners. The governing principle is the doctrine of agency. When one co-owner institutes a suit for eviction against the tenant, it is construed as the suit having been instituted in his own right and also as an agent of the other co-owners. What is of importance is the jural-relationship of the landlord and tenant. Once a co-owner satisfies the description of the landlord, the fact that the other co-owners have not joined in action pales in

significance and does not affect the maintainability of the suit. Of course, different considerations come into play when existerence of a dispute between the co-owners as regards the institution of the very action of eviction, is brought to the notice of the Court.

7. A profitable reference in this context can be made to a decision of the Supreme Court in the case of ***Mohinder Prasad Jain Vs. Manohar Lal Jain*** [1], wherein the Supreme Court expounded the legal position in the following words :

> *"10 This question now stands concluded by a decision of this Court in India Umbrella Manufacturing Co. & Ors. vs. Bhagabandei Agarwalla (Dead) by Lrs. Savitri Agarwalla (Smt.) & Ors. [(2004) 3 SCC 178] wherein this Court opined:*
>
> > *"6 Having heard the learned counsel for the parties we are satisfied that the appeals are liable to be dismissed. It is well settled that one of the co-owners can file a suit for eviction of a tenant in the property generally owned by the co-owners. (See Sri Ram Pasricha v. Jagannath [(1976) 4 SCC 184] and Dhannalal v. Kalawatibai [(2002) 6 SCC 16], SCC para 25.) This principle is based on the doctrine of agency. One co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other co-owners. The consent of other co- owners is assumed as taken unless*

1 2006(2) SCC 724

> *it is shown that the other co-owners were not agreeable to eject the tenant and the suit was filed in spite of their disagreement. In the present case, the suit was filed by both the co-owners. One of the co-owners cannot withdraw his consent midway the suit so as to prejudice the other co-owner. The suit once filed, the rights of the parties stand crystallised on the date of the suit and the entitlement of the co-owners to seek ejectment must be adjudged by reference to the date of institution of the suit; the only exception being when by virtue of a subsequent event the entitlement of the body of co-owners to eject the tenant comes to an end by act of parties or by operation of law."*

> *11 A suit filed by a co-owner, thus, is maintainable in law. It is not necessary for the co- owner to show before initiating the eviction proceeding before the Rent Controller that he had taken option or consent of the other co-owners. However, in the event, a co-owner objects thereto, the same may be a relevant fact. In the instant case, nothing has been brought on record to show that the co-owners of the respondent had objected to eviction proceedings initiated by the respondent herein. ……."*

8. This aspect was again considered by the Supreme Court in the case of ***Boorugu Mahadev and Sons & Anr. Vs. Sirigiri Narasing Rao*** [2], in the context of the proceedings between a landlord and tenant, governed by the rent control legislation. The Supreme Court

2 2016(3) SCC 343

enunciated that the concept of ownership and consequently the right to sue, in such cases, has to be distinguished from the one in a title suit. The observations in paragraph No.18 of the said judgment are instructive and thus extracted below :

> *"18 It is also now a settled principle of law that the concept of ownership in a landlord-tenant litigation governed by Rent control laws has to be distinguished from the one in a title suit. Indeed, ownership is a relative term, the import whereof depends on the context in which it is used. In rent control legislation, the landlord can be said to be the owner if he is entitled in his own legal right, as distinguished from for and on behalf of someone else to evict the tenant and then to retain control, hold and use the premises for himself. What may suffice and hold good as proof of ownership in landlord-tenant litigation probably may or may not be enough to successfully sustain a claim for ownership in a title suit. (vide Sheela & Ors. vs. Firm Prahlad Rai Prem Prakash, (2002) 3 SCC 375)."*
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> (emphasis supplied)

9. The learned counsel for the petitioner, without disputing the generality of aforesaid proposition, endevoured to canvass a submission that general proposition as regards the entitlement of a co-owner to sue, to evict a tenant, cannot have application to a suit instituted by and on behalf of HUF, with equal force. A Hindu Undivided Family (HUF) by its very character and legal connotation, stands on a different footing. The representation of a HUF by the

Karta is the rule. Indisputably, in an appropriate case, even a person who is not the senior-most member may act as Karta but a case for such a representation is required to be made out, on facts.

10. The learned counsel for the petitioner, to bolster up the aforesaid submissions, placed a strong reliance upon the judgment of the Supreme Court in the case of ***Tribhovandas Haribhai Tamboli Vs. Gujarat Revenue Tribunal & Others*** [3], wherein the Supreme Court had explained the position of the Karta of Hindu Undivided Family in the matter of management of the joint family property. The observations of the Supreme Court, in paragraph 13, on which a strong reliance was placed by the learned counsel for the petitioner, read as under :

> *"13 Regarding the management of the Joint Family Property or business or other interests in a Hindu Joint Family, the Karta of the Hindu Joint Family is a prima inter pares. The managership of the Joint Family Property goes to a person by birth and is regulated by seniority and the Karta or the Manager occupies a position superior to that of the other members. A junior member cannot, therefore, deal with the joint family property as Manager so long as the Karta is available except where the Karta relinquishes his right expressly or by necessary implication or in the absence of the Manager in exceptional and extra-ordinary circumstances such as distress or calamity effecting the whole family and for supporting the family or in the absence of the father whose whereabouts were not known or who was away in remote place*

3 (1991) 3 SCC 442

> *due to compelling circumstances and that is return within the reasonable time was unlikely or not anticipated. No such circumstances are available here to attract the facts of the case."*
>
> (emphasis supplied)

11. The learned counsel for the petitioner has placed reliance on a Division Bench judgment of Nagpur High Court in the case of ***Shop of Bhai Ganeshram Balbhadra and Anr. Vs. Firm Mangilal Balkisan and Ors.*** [4], wherein the requirement of institution of the suit by or on behalf of the members of the family, was examined. The observations of the Court in paragraphs 15 and 16 postulate legal position. They read as under :

> *"15 A suit by or against a joint Hindu Mitakshara family may be conducted or defended as the case may be by the karta alone in a representative capacity or by all the members of the family being impleaded if the karta alone is on the record, in the event of his death substitution has got to be made within the time limited by law either of the succeeding karta in his representative capacity, as was done in 'Atma Ram Vs. Banku Mal' 11 Lah. 598, or of all the surviving members of the family. But in each case the application has to be one for substitution, which has got to be made within 90 days of the date of death. Otherwise, the suit or the appeal as the case may be will abate. In this case, the appeal abated as soon as 90 days elapsed from the 23rd June 1950 and no application for substitution had been made. That appears to have been the view of the learned single Judge who referred this case, and we entirely agree with that view.*

4 AIR 1952 Nag. 390

> *16 It is not a case where all the members of the joint family had been impleaded and the karta died. In such a case, if all the members of the joint family at the time of the death of the deceased karta are already on record, the case would be governed by Rule 2 of Order 22. Only an entry to that effect will have to be made in the record, and the suit or the appeal as the case may be, would proceed without anything further being necessary to be done. There is ample authority for the proposition that even if the karta is on the record but not as such, that is to say, he has been impleaded in the litigation along with the other members of the joint family and if one of the members died leaving him surviving not only the members who are already on record but some other members who may have come into existence during the pendency of the litigation, it is necessary under the law to make substitution in place of the deceased party, and it will not do dimply to say that the karta is already on the record : see in this connextion the Bench decisions of the Patna High Court in 'Lilo Sonar Vs. Jhagru Sahu', 3 Pat. 853 and 'Basist Naraya Singh V. Modnath Das', 7 Pat. 285 and the case therein mentioned."*

12. Per contra, Shri Mayur Khandeparkar stoutly submitted that it is not an immutable rule of law that the Karta must represent the HUF in a suit for eviction instituted against the tenant. A co-owner is equally competent to prosecute the suit for the purpose of regaining possession of the demised premises. The aforesaid judgment of the Supreme Court in the case of ***Tribhovandas Haribhai Tamboli*** (Supra) has been construed and explained by the Supreme Court in the judgment in the case of ***Nopany Investments (P) Ltd. Vs. Santokh***

Singh (HUF) [5], urged Shri Khandeparkar.

13. In the case of ***Nopany Investments (P) Ltd.*** (Supra), one Jasraj Singh had instituted proceeding for eviction before the Additional Rent Controller claiming himself to be the Karta of Dr. Santokh Singh (HUF), when an elder member of the said HUF was alive. A challenge to the tenability of the proceeding at the instance of Jasraj Singh was mounted on behalf of the tenant. The Supreme Court, *inter-alia,* framed the following question :

> *"(i) Whether Jasraj Singh could file the suit for eviction, in the capacity of the Karta of Dr. Santokh Singh HUF, when, admittedly, an elder member of the aforesaid HUF was alive ?"*

14. The Supreme Court, after adverting to the pronouncement in the cases of ***Sushil Kumar (Sunil Kumar) and another Vs. Ram Prakash and others***[6] and ***Tribhovandas Haribhai Tamboli*** (Supra), on which reliance was placed on behalf of the tenant in support of the objection, enunciated that the decision in the case of ***Sunil Kumar and another*** (Supra), does not hold that when the elder member of a joint Hindu family is alive, the younger member would not at all be

5 (2008) 2 SCC 728
6 (1988) 2 SCC 77

entitled to act as a manager or Karta of the joint family.

15. The Supreme Court explained the import of the judgment in the case of ***Tribhovandas Haribhai Tamboli*** (Supra) in the following words:-

> *"9 From a careful reading of the observation of this court in Tribhovandas's case [supra], it would be evident that a younger member of the joint hindu family can deal with the joint family property as manager in the following circumstances :- (SCC P. 450, para 13)*
>
> *(i) if the senior member or the Karta is not available;*
>
> *(ii) where the Karta relinquishes his right expressly or by necessary implication;*
>
> *(iii) in the absence of the manager in exceptional and extra ordinary circumstances such as distress or calamity affecting the whole family and for supporting the family;*
>
> *(iv) in the absence of the father :-*
>
> *(a) whose whereabouts were not known or*
>
> *(b) who was away in a remote place due to compelling circumstances and his return within a reasonable time was unlikely or not anticipated. Therefore, in Tribhovandas's case [supra], it has been made clear that under the aforesaid circumstances, a junior member of the joint hindu family can deal with the joint family property as manager or act as the Karta of the same."*

16. The aforesaid exposition of law makes it abundantly clear that there is no restraint in law on a younger member of the joint family dealing with joint family property as a Manager or Karta thereof in certain circumstances, which necessitate the discharge of such duties by a younger member.

17. The learned counsel for the petitioner urged that the learned Judge as well as the Appellate Bench completely lost sight of the provision contained in Order XXX Rule 10 of the Code. The propositions of Hindu Law, as regards the representation to be made by Karta, according to the learned counsel for the petitioner is required to be applied in the context of the provisions contained in Order XXX Rule 10. The observations of the Appellate Bench that there was no obligation at all to bring the successor Karta on record is, according to the learned counsel for the petitioner, in the teeth of the provisions contained in Order XXX Rule 10, which reads as under :-

> ***"ORDER XXX- SUITS BY OR AGAINST FIRMS AND PERSONS CARRYING ON BUSINESS IN NAMES OTHER THAN THEIR OWN :***

> ***10. Suit against person carrying on business in name other than his own—*** *Any person carrying on business in a name or style other than his own name, or a Hindu undivided family carrying on business under any name, may be sued in such name or style as if it were a firm name, and, in so far as the nature of such case permits, all rules under this Order shall apply accordingly."*

18. To butress the submission of applicability of the aforesaid provision in the matter of institution and continuation of a suit by a Hindu Undivided Family, the learned counsel for the petitioner, placed a very heavy reliance upon a judgment of this Court in the case of ***Nergish Minoo Pavri & Anr. Vs. Pramod Kishanchand Gupta*** [7]**.** In the said case, the suit was instituted by the petitioner for declaration of tenancy against the predecessor-in-title of the respondents, Kishanchand P. Gupta, Karta/Manager of Hindu Undivided Family of Kishanchand P. Gupta. The suit was decreed. On the date, the appeal was preferred by the HUF, said Kishanchand P. Gupta was not alive. Pramod Gupta, the son of Kishanchand P. Gupta took out a notice of motion seeking deletion of Kishanchand P.Gupta and permission to represent Kishanchand P. Gupta. The said notice of motion was allowed by the Appellate Bench. This Court held that the Court below

7 (2010) 1 Mah. L J 264

has, without understanding the basic difference between a "firm" and a "HUF", allowed the application filed by the respondent. A HUF needs to be represented by Karta/Manager. In case of a HUF, if karta dies during pendency of a suit/appeal, the successor karta will have to come forward and apply for bringing him on record. In the process, this Court construed the import of the provisions contained in Rule 10 as under :

> *"8. Rule 10 of Order 30 provides that any person carrying on business in a name or style other than his own name or Hindu undivided family carrying on business under any name, may be sued in such name or style as if it were a firm name, and, insofar as the nature of such case permits, all rules under Order 30 shall apply accordingly. From bare perusal of this provision, it is clear that when a HUF is "to be sued", it may be sued in the name in which it carries business. In the present case the suit was filed against the HUF showing Kishanchand Gupta as its karta/manager and not in other name. In other words, the provision of rule 4(2) will apply only where a Hindu undivided family is carrying on business under any name, and is to be sued it could be sued in the name or style in which it carries its business. It needs to be noted that a HUF cannot appear as a HUF, and the manager/karta should, therefore, appear in his own name, though all subsequent proceedings could be continued in the name of HUF. A HUF need to be represented by its karta/manager in a suit/appeal and in the event of his death a successor karta/manager will have to represent the HUF and continue the proceedings. But, after disposal of a suit and at the time of filing an appeal if karta, who was representing the HUF in the suit dies, the successor karta will have to file the appeal. The*

> *appeal, in such eventuality cannot be filed in the name of HUF, showing the deceased karta/manager as its karta/manager. Such appeal would be a nullity.*"
>
> (emphasis supplied)

19. According to the learned counsel for the petitioner, in the case at hand, the situation is further accentuated by the fact there is material on record to indicate that the HUF has indeed appointed a Karta and yet the said Karta is not brought on record to prosecute the suit. To lend support to this submission, the learned counsel for the petitioner drew attention of the Court to the affidavit in reply filed by the respondent Nos. 2 to 4 before the trial court, wherein it was asserted that a new Karta though appointed, being a senior citizen and residing at Dehradun, it was not possible for him to give instructions. Attention was also invited to a notice dated 17th June 2019 purported to have been issued by the Karta/Authorized Signatory of HUF to all the tenants of the HUF.

20. The aforesaid submissions are required to be appreciated in two perspectives. One, the necessity of impleadment of a successor Karta. Two, the right of the respondent Nos.2 to 4 to prosecute the suit for eviction in the capacity of the co-owners. As regards the substitution

of the successor Karta to represent the HUF, it is pertinent to note that the Appellate Bench, in Appeal No. 306 of 2009 arising out of R.A.E. Suit No.660/1127/2002, which was initially instituted by the HUF, had passed an order permitting the appellants therein to take necessary steps for bringing the new Karta on record on or before 5th February 2016, by an order dated 27th January 2016. It is the grievance of the petitioner that despite the said order, the successor Karta has not been impleaded and this fact was also downplayed by the Appellate Bench, in the case at hand, as being one of permissive nature.

21. The material on record thus indicates that it is the case of the plaintiff in the instant suit and the appellants in the said Appeal No. 306 of 2009 arising out of a previous suit instituted by the HUF, that a new karta has indeed been appointed. If the successor Karta has been appointed, the provisions of Order XXX Rule 10 will have full application. It is not a positive case that the Karta has not been appointed. The pronouncement of this court in the case of ***Nergish Minoo Pavri & Anr.*** (Supra) will, therefore, govern the representation of the HUF in the suit.

22. This, however, does not imply that for want of impleadment of Karta, in the peculiar facts of the case, the suit is liable to be dismissed. Indisputably, respondent Nos. 2 to 4 have been impleaded as the plaintiffs to the suit in the capacity of the legal representatives of the deceased plaintiff No.2. The learned counsel for the respondent Nos.2 to 4 was justified in advancing a submission that a decree for eviction was also sought on the ground of personal bonafide requirement of the deceased plaintiff No.2 and his daughter Anjali-respondent No.4 herein. Thus, the respondent No.4, in the capacity of being a co-owner, is entitled to prosecute the suit irrespective of the Karta being brought on record.

23. The aforesaid submission is required to be considered in the backdrop of the proposition that a co-owner is entitled to institute a suit for eviction for and on behalf of all the co-owners, unless it is shown that the other co-owners were not agreeable to the ejectment to the tenant. It is one thing to say that a member of the family other than, or in the absence of, a Karta, may be permitted to prosecute the suit on account of special circumstances of a given case. And a completely different thing to claim that despite a Karta having been appointed, he will not be impleaded to represent the HUF sans

the existence of special circumstances. In the latter case, the tenability of the suit, without impleading the Karta, would be in issue.

24. Reverting to the facts of the case, as the respondent Nos.2 to 4 are already prosecuting the suit, either in the capacity of the co-owner or as the legal representatives of deceased plaintiff No.2 and, at the same time, there is a cloud of doubt over the intendment of the HUF to prosecute the suit for eviction of the tenant, especially on account of the fact that there being material to show that a Karta has indeed been appointed and there is an alleged non-compliance of an order of Appellate Bench in Appeal No.306 of 2009 to bring the Karta on record, steps will have been taken to implead the successor Karta in the instant suit. It would be in the fitness of things to frame and try the issue regarding the tenability of the suit, in the event of non-impleadment of the successor Karta. To this extent, the observations of the Appellate Bench to the effect that the non-impleadment of the successor Karta has no bearing whatsoever on the tenability of the suit are unsustainable.

25. The question as to whether the HUF as such intends to prosecute the suit for eviction is essentially for the HUF to answer. It

would be onerous for the defendants to plead and prove that the HUF does not want to prosecute the suit. Therefore, it would be appropriate to provide an opportunity to the HUF to make its stand clear, if it desires to.

26. In the aforesaid peculiar circumstances, in my view, it would be appropriate to provide an opportunity to the HUF to bring the successor Karta on record, within a stipulated period, and, in the event of default, frame and try the issue of tenability of the suit for eviction at the instance of HUF, as such, without bringing Karta on record, and plaintiff Nos. 2 to 4, in the capacity of the co-owners of the demised premises. The petition, therefore, deserves to be allowed.

27. Hence, the following order :-

O R D E R

The petition stands allowed in the following terms :

(a) The HUF may bring on record the successor Karta and accordingly amend the cause title of the plaint within a period of one month from today.

(b) In the event, the Successor Karta is

not brought on record, the trial court shall frame, try and decide the following issues along with the other issues, which may arise for determination, on the basis of the pleadings of the parties :

(i) *Whether the suit is tenable in the absence of successor Karta being brought on record?*

(ii) *Whether the plaintiff Nos.2(a) to 2(c) can independently maintain the action for eviction in the absence of successor Karta being brought on record?*

(c) No costs.

Rule is made absolute in the aforesaid terms.

[N.J. JAMADAR, J.]

Shraddha Talekar PS