IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 12693 OF 2025
IN
CIVIL REVISION APPLICATION NO. 225 OF 2023

M/S. NISHAT TRADING CO., A PARTNERSHIP FIRM **...APPLICANT**

IN THE MATTER BETWEEN :

M/S. NISHAT TRADING CO., A PARTNERSHIP FIRM **...APPLICANT**

Versus

RANCHHODDAS LOTWALA FOUNDATION AND ORS. **...RESPONDENTS**

Mr. Pradeep Thorat a/w Mr. Sahil Saiyed M. N., Ms. Priyanka Singh & Mr. Somesh Pathak, *learned counsel for the Applicant.*

Ms. Bimal Bhabhda, *learned counsel for Respondent Nos. 1, 2, 3, 5 & 6.*

Ms. Ranjana Parikh, *learned counsel for Respondent Nos. 7 & 8.*

CORAM : ARUN R. PEDNEKER, J.

DATE : 24th SEPTEMBER, 2026.

***Per Court* :**

1. Heard learned counsel appearing for the parties and perused the records.

2. By the present Revision Application, the Applicant-Partnership Firm is challenging the judgment and decree dated 4th May, 2022 passed by the learned Appellate Bench of Small Causes Court in Appeal No. 158 of 2017, whereby the Appellate Bench allowed the Appeal preferred by Respondent Nos. 1 to 5 and set aside the judgment and decree passed by the learned Trial Court in R.A.E. Suit No. 770/1408 of 2004. The Appellate Court upheld the findings of learned Small Causes Court to the extent that part of the suit premises were sub-let by Defendant No. 1, without permission of the Plaintiff, to Defendant Nos. 2 and 3 and reversed the findings of learned Trial Court that the suit was not maintainable, as the Plaintiff is a Trust and it did not have the supporting resolution passed by all the trustees for instituting the suit. The Appellate Court held that the suit is filed by the Trust and all the trustees are also Plaintiffs and have signed the plaint and as such, the suit is maintainable without a formal resolution by the Trust.

3. The facts giving rise to the present Revision Application are that the Plaintiff is a Public Charitable Trust registered under the Public Trust Act, 1950. The suit building is owned by the Plaintiff-Trust and Defendant No. 1 was the tenant of the suit premises. The suit premises consist of a ground floor shop known as 'Nishat Trading Company' situated at Arya Bhavan, 459/461, S.V.P. Road, Mumbai-400 004, bounded on the north by S.V.P. Road, south by the shop of

Mr. M. J. Raval, east by the shop of New Pioneer Automobiles and west by the shop of Mr. Nagji Amarchand, as described in the suit.

4. It is the case of Plaintiff-Trust that Defendant No. 1, without permission of the Plaintiff, had sub-let the suit premises to Defendant Nos. 2 and 3 and Defendant Nos. 2 and 3 are running their clinic in the said part of suit premises in the name and style as ‘Jankharia Imaging’. Thus the Plaintiff filed a suit for eviction against the Defendants on the ground of sub-letting part of the suit premises without permission of the Plaintiff under Section 16(1)(e) of the Maharashtra Rent Control Act, 1999.

5. Defendant No. 1 denied sub-letting of the premises. Defendants in their written statement stated that they are running their earlier business in the name and style as ‘Nishat Business Centre’ and Defendant Nos. 1 and 2 are the partners of business and that they had approached Plaintiff Nos. 2 & 3 in presence of the Manager of Plaintiff No. 1-Trust for permission for inlet pipeline, water connection and sewerage pipeline for the toilet in the suit shop in the first week of September 2003 and that the permission was granted by the Plaintiff-Trust for the said purposes and also to increase the electricity load to be used in the suit shop. Defendant Nos. 2 and 3 had stated that they are in occupation of the suit premises with consent of the Plaintiffs. Objection is also raised as regards the non-production of resolution of the Trust to institute the suit.

6. Considering the material on record, the learned Trial Court formulated the following issues and rendered findings thereon, which are noted below :-

Sr. No.	ISSUES	FINDINGS
1.	Does Plaintiff prove that Defendant No. 1 has unlawfully sub-let the suit premises to Defendant Nos. 2 and 3 as alleged ?	In the affirmative.
2.	Whether Plaintiff is entitled for vacant possession of suit premises and injunction against the Defendants as alleged ?	In the negative.
3.	Whether the Plaintiff is entitled for relief claimed ?	In the negative.
4.	What order and decree ?	Suit is dismissed.

7. Learned Trial Court held that the suit property has been sub-let by Defendant No. 1 to Defendant Nos. 2 and 3 without prior permission of the Plaintiff-Trust, however learned Trial Court has further observed that the trustees have to take a decision of filing of the suit on behalf of the Trust. The said decision should be by majority and must be reflected in the resolution passed in the

meeting of Managing Committee of the Trust and the Trust can speak or disclose the decision of filing of the suit through the said resolution. In the instant case, the resolution dated 24th April, 2004 in respect of filing of the suit against the Defendants is taken only by two trustees and that there are five trustees of Plaintiff No. 1-Trust. Therefore, such a major decision of filing of the suit against the Defendants ought to have been taken with majority of atleast three trustees and accordingly, the suit was dismissed, as the resolution for filing suit was supported by only two trustees.

8. The Plaintiff-Trust challenged the decision of learned Trial Court before the Appellate Bench of Small Causes Court. The Appellate Bench formulated the following questions for determination and rendered its findings thereon, which are noted below :-

Sr. No.	**POINTS**	**FINDINGS**
1.	Whether the suit was maintainable?	Yes
2.	Whether there was a sub-letting of part of the suit premises to the Defendant Nos. 2 and 3 falling within ambit of Sec.16(1)(e) of Maharashtra Rent Control Act 1999 ?	Yes

3.	Is there need to interfere with the Judgment and Decree passed by the Trial Court?	Yes
4.	What order?	As per final order

9. The Appellate Court confirmed the findings of learned Trial Court that Defendant No. 1 had sub-let the property to Defendant Nos. 2 and 3 and as such, the Defendants were liable for eviction under Section 16(1)(e) of the Maharashtra Rent Control Act, 1999.

10. As regards the maintainability of suit is concerned, the Appellate Bench held that the suit is maintainable, as the same is filed by the Trust and all its trustees. All the trustees are the Plaintiffs in the suit, as such no separate resolution is required for filing of the suit.

11. The Appellate Court observed that PW-1 Mr. Anand Nagappa Naik had stated that co-trustees had signed the plaint and that Plaintiff Nos. 2 to 5 were the only trustees of Plaintiff No. 1-Trust, when the suit was instituted and all the trustees of Plaintiff No. 1-Trust had signed the plaint.

12. The Appellate Court held that the suit had been instituted upon plaint being signed by all the trustees and thus, the suit was

maintainable and no resolution was required by the Trust to institute the suit. Resolution is required only when some of the trustees want to institute the suit and in the instant case all the trustees had signed the suit and thus, the suit was maintainable.

13. Challenging the judgment of Appellate Court, learned counsel for the Applicant has made brief submissions on sub-letting. However, there are concurrent findings of facts and no error is demonstrated before me, as regards the finding of the Court on sub-letting, as the Courts have rendered finding that Defendant Nos. 2 and 3 were found in exclusive possession of portion sub-let to them. The only substantial issue that arises for consideration 'whether the suit as filed was maintainable on behalf of the Trust with the supporting resolution of only two trustees?'. In the instant case, the material on record demonstrates that all the trustees are parties/Plaintiffs and have signed the plaint.

14. Learned counsel for the Applicant submits that the suit without supporting resolution of the majority of trustees, is not maintainable and in support has relied upon the judgment of this Court in the case of ***Shri Cutchi Visa Oswal Derawasi Jain Pathshala, through its Chairman Virchand Koonverji Korani v/s. Shri Cutchi Visha Oswal Derawasi Jain Mahajan, through its Chairman, Popatlal Bharmal Sah & Another***[1], particularly paragraph nos. 41 to 46, wherein at paragraph no. 46, it has observed that :-

[1] 2004 SC OnLine Bom 823.

> "*The Trust properties vest on all the trustees. Body of the Trust comprises of all the trustees of the Trust. It is, therefore, apparent that first of all, all the trustees have to decide whether or not suit is to be filed on behalf of the Trust. It has to be a joint or at least decision by majority. It cannot be disputed that the decision of the Trust must be reflected in the resolution passed in a meeting of the Managing Committee of the Trust. It is only through such resolution the Trust can speak or disclose its mind that it has decided to file suit and authorised one of its trustees to sign and verify the plaint to appoint or engage deader to represent the interest of the Trust.*"

15. *Per contra*, learned counsel for the Respondents submits that as the suit is filed by all the trustees by signing a plaint, no separate resolution is required for filing the said suit and relies upon the judgment of this Court in the case of ***Minoo Rustomji Shroff and Ors. v/s. Dali Kavasji Gai and Ors.***[2].

<u>Considered the submissions</u> :-

16. In the fact situation, the judgment relevant to the facts of this case is the case of ***Minoo Rustomji Shroff*** (*supra*), wherein this Court has considered the earlier judgment in the case of ***Shri Cutchi Visa Oswal Derawasi Jain Pathshala*** (*supra*) and has observed in paragraph no. 19 as under :-

> "*19. Before concluding, certain objections raised by the learned Counsel for the respondent may be taken into consideration. It is vehemently contended by the learned Counsel for the respondent that the plaint/application was not signed by all or*

[2] MANU/MH/0419/2008.

any of the trustees and therefore the plaint itself is defective and was liable to be rejected. He contended that before filing such an application, it was necessary for the trustees to pass a resolution to that effect. He placed reliance upon (Shri Cutchi Visa Oswal Derawasi Jain Pathshala v. Shri Cutchi Visha Oswal Derawasi Mahajan and Anr.) MANU/MH/0776/2004 : 2005(1) BomCR105. He referred specifically to paras 44 and 45 of the said judgment. They read as follows:

> *44. This Court in the case of (Shrikrishna v. Ramnarayanf 1983 B.C.I. 27 (soft) : MANU/MH/0270/1982 : 1983 Mh.L.J. 248 followed the law laid down in the case of (Vedakannu v. Annadana Chatram) MANU/TN/0296/1938 : A.I.R. 1938 Mad 982 wherein it was observed thus:*
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> > *The general principle of law is that the office of a trustee, irrespective of the number of trustees, is a joint one and co-trustees form, as it were, one trustee and must therefore execute the duties of their office jointly. Hence no suit in regard to Trust properties would be maintainable by one or some of the trustees only, if the remaining trustees are not before the Court either as plaintiffs or even as defendants.*
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> *45. As held above, the Trust properties vest on all trustees. Body of the Trust comprises of all the trustees of the Trust. It is, therefore, apparent that first of all, all the trustees have to decide whether or not suit is to be filed on behalf of the Trust. It has to be a joint or at least decision by majority. It cannot be disputed that the decision of the Trust must be reflected in the resolution passed in a meeting of the managing committee of the Trust. It is only through such resolution the Trust can*

speak or disclose its mind that it has decided to file suit and authorised one of its trustees to sign and verify the plaint, to appoint or engage pleader to represent the interest of the Trust. In the instant case, it is nowhere mentioned in body of the plaint that the suit is being filed in pursuance of any such resolution passed by the the managing committee of the appellant-Trust. Nowhere it is mentioned that Mr. V.K. Korani was authorised by all the trustees to represent interest of the Trust and that he is entitled to sign and verify the plaint on behalf of the Trust. Thus, prima facie, suit has been filed without there being any authority in favour of Mr. Korani from the appellant-Pathshala Trust. The suit, thus, suffers from this additional substantial defect.

From the facts of the said case, it is clear that only one of the trustees had filed the suit and neither there was any pleading nor there was any evidence that the trustees had passed a resolution to, file a suit against the defendant and that the said trustee, who had filed the suit was authorised by wall of the trustees to represent the Trust. If one or some of the trustees only filed the suit or such an application, this authority would be applicable, ***but where all the trustees have joined as the applicants in the application, that itself indicates that all the trustees had agreed and resolved to file the application for eviction. Therefore, it was not necessary to plead and prove that such a resolution was passed. In fact there was no question of authorisation of any particular trustee to file such an application because the application was filed by all the trustees jointly.***"

17. From the judgment of this Court, in the case of ***Minoo Rustomji Shroff*** (*supra*), it is clear that when the suit is filed by all the trustees, no separate resolution is required for filing of the suit.

18. The Hon’ble Supreme Court in the case of ***J. P. Srivastava & Sons (P) Ltd. and Others v/s. Gwalior Sugar Co. Ltd. and Others***[3] while considering whether one co-trustee could determine a tenancy, at paragraph nos. 24 to 29 has observed as under :-

> “*24. ..... A Full Bench of the Gujarat High Court in Atmaram Ranchhodbhai v. Gulamhusein Gulam Mohiyaddin*[3] *said: (AIR p. 115, para 3) W]hether the Trust is a private Trust governed by the Indian Trusts Act or is a public charitable or religious Trust, a trustee cannot delegate any of his duties, functions and powers to a co-trustee or to any other person unless the instrument of Trust so provides or the delegation is necessary or the beneficiaries competent to contract consent to the delegation or the delegation is in the regular course of business. These are the only four exceptional cases in which delegation is permissible and save in these exceptional cases, the trustees cannot, even by a unanimous resolution, authorise one of themselves to act as managing trustee for executing the duties, functions and powers relating to the Trust and every one of them must join in the execution of such duties, functions and powers."*
>
> *25. The issue in that case was whether one co-trustee could determine a tenancy. The Court said he could not, but held: (AIR p. 116, para 8)*
>
> *"But when we say that the tenancy must be determined by all co-trustees, we must make it clear that what we mean is that the decision to terminate the tenancy must be taken by all the co-trustees. The formal act of giving notice to quit pursuant to the decision taken by all the co-trustees may be performed by one co-trustee on behalf of the rest. The notice to quit given in such*

3 (2005)1 Supreme Court Cases 172.

a case would be a notice given with the sanction and approval of all the co-trustees and would be clearly a notice given by all co-trustees."

26. The view has been followed by the different High Courts (see for example Duli Chand v. Mahabir Pershad Trilok Chand Charitable Trust) and held to be too narrow in Jain Swetambara Murthi Pujaka Samastha v. Waman Dattatreya Pukale.

27. This Court in Shanti Vijay & Co. v. Princess Fatima Fouzias held that: (SCC p. 612, para 26)

"... the act of one trustee done with the sanction and approval of a co-trustee may be regarded as the act of both. But such sanction or approval must be strictly proved."'

28. It was also held that a trustee could act on behalf of others, if there is a clause in the Trust deed authorising the execution of the Trust to be carried out by "one or more or by majority of the trustees".

29. Therefore although as a rule, trustees must execute the duties of their office jointly, this general principle is subject to the following exceptions when one trustee may act for all (1) where the Trust deed allows the Trusts to be executed by one or more or by a majority of trustees; (2) where there is express sanction or approval of the act by the co-trustees; (3) where the delegation of power is necessary; (4) where the beneficiaries competent to contract consent to the delegation; (5) where the delegation to a co-trustee is in the regular course of the business; (6) where the co-trustee merely gives effect to a decision taken by the trustees jointly."

19. The Hon'ble Supreme Court in the case of ***J. P. Srivastava & Sons (P) Ltd.*** (*supra*) held that the prohibition is that the trustee

cannot delegate any of his duties, functions and powers of co-trustee to any other person unless provided in the Trust with certain exceptions noted above in paragraph no. 29 of the judgment. Thus it follows that the resolution is required only when one of the trustees acts on behalf of all the trustees and not otherwise. In the instant case, all the trustees have filed the suit by signing the plaint and therefore, the resolution of Trust is not required to institute the suit.

20. In this view of the matter, there is no case made out to interfere with the impugned order of the Appellate Court. Accordingly, the present Civil Revision Application stands dismissed.

21. In view of the dismissal of Civil Revision Application, Interim Application No. 12693 of 2025 stands disposed of.

[ARUN R. PEDNEKER, J.]

22. After passing of the order, the learned counsel appearing for the original Defendant Nos. 7 and 8 submits that they are rendering public service and medical facilities in the suit premises and they seek time of 1 & ½ year to vacate the premises subject to payment of compensation.

23. Learned counsel for the Applicant to take instructions in this regard.

24. For compliance, stand over to **1st October, 2026**.

[ARUN R. PEDNEKER, J.]