

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 295 OF 2015
IN
WRIT PETITION NO. 7389 OF 2011

Win N Quiz Company Ltd. .. Applicant
vs.
The Authorised Officer,
Bank of Baroda & Ors. .. Respondents

Mr. S.A. Oak for the Applicant.
Ms. Neeta Jadhav i/b. Anant B. Shinde & Co. for Respondent No.1.
Ms. Sapana Ruchure i/b. T.N. Tripathi & Co. for Respondent No.2.

CORAM : M.S. SONAK, J.
DATE : 14 OCTOBER, 2015.

P.C. :

1) Learned Counsel for respondent No.1 (Bank) states that the entire dues, on account of which the suit premises had been mortgaged in favour of respondent No.1 have since been cleared. Therefore, the respondent No.1 no longer claims that the suit premises are mortgaged in their favour or that the same constitute any security for repayment of loans. In view of this, leave is granted to delete respondent No.1 in this Petition. The necessary amendment to be carried out forthwith.

2) Further, by this Petition the petitioner challenges the order dated 24.08.2011 made by the Division Bench of the Small Causes Court holding that Small Causes Court has no jurisdiction to try the Rent Act Declaratory Suit No.307 of 2007 instituted by the petitioner. The said order

was made by the Revisional Court in Revision Application No.44 of 2011 instituted by respondent No.1 herein by invoking the provisions of SARFAESI Act, 2002.

3) Now, that the entire dues towards respondent No.1 have been cleared, there is no occasion to invoke the provisions of SARFAESI Act and proceed against the suit premises. In view of such subsequent development therefore, it will be appropriate if the impugned order dated 24.08.2011 is set aside. The same is hereby set aside. Respondent No.2 has also consented to setting aside the order dated 24.08.2011 and restoration of the R.A.D. Suit No.307 of 2007 before the Small Causes Court. R.A.D. Suit No.307 of 2007 is accordingly restored to the file of the Small Causes Court.

4) The learned Counsel for the petitioner seeks leave to delete the respondent No.1 in this Petition from the cause title in R.A.D. Suit No.307 of 2007. This application is not opposed either by respondent No.1 or Respondent No.2 who is original landlord. Accordingly, leave is granted to delete the Bank of Baroda from the cause title in R.A.D. Suit No.307 of 2007. Necessary amendment to be carried out by the petitioner within four weeks from today.

- 5) The Small Causes Court is directed to proceed with and decide the R.A.D. Suit No.307 of 2007 on its own merits and in accordance with law after giving due opportunity to all the contesting parties.
- 6) The petitioner and respondent No.2 to appear before the Small Causes Court on 29.10.2015 at 11.00 a.m. and produce authenticated copy of this order.
- 7) The Civil Application as well as Writ Petition No.7389 of 2011 are disposed of in the aforesaid terms.
- 8) All concerned to act on the basis of authenticated copy of this order.

(M.S. SONAK, J.)