

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST) NO. 5993 OF 2015

Ikhlaque Ahamd Khan
(deceased)

1(a) Khaliquzzama s/o. Akhalaque
Ahmed Khan and ors.

.. Petitioners

vs.

Mahesh Kanayalal Ramchand Hassija and ors.

.. Respondents

Mr. Akbar Ali N. Nasikwalla for the Petitioners.

CORAM : M. S. SONAK, J.

DATE : 08 SEPTEMBER 2015.

P.C. :-

1] This petition challenges the order dated 29 January 2015 made by the Division Bench of the Small Causes Court dismissing the petitioners' application at Exhibit-9 seeking impleadment in Obstruction Notice No. 712 of 2012. By order dated 15 January 2014, the Small Causes Court had in fact allowed the application at Exhibit-9.

2] In this case, Mahesh Kanayalala Ramchand Hassija had instituted R.A.E.& R. Suit NO. 125/405 of 1980 against the defendants seeking their eviction from the suit premises. The same was decreed. The execution of decree was, however, obstructed by Rafique Shaikh and Adnan Shaikh. Accordingly, the said plaintiff

Mahesh Hassija took out Obstruction Notice No. 712 of 2012. During the pendency of such notice, Akhalaque A. Khan, predecessor-in-title of the petitioners herein and took out Exhibit-9 seeking impleadment in the obstructionists proceedings. The Small Causes Court by order dated 15 January 2014 allowed the application at Exhibit-9, but the Division Bench by impugned order dated 29 January 2015 has dismissed the application at Exhibit-9.

3] There is no jurisdictional error in the impugned order. The impugned order observes that the predecessor-in-title of the petitioners had already instituted R.A.D. Suit No. 1790 of 2012 claiming declaration of tenancy in respect of suit premises as also relief of permanent injunction restraining dispossession. That apart, there is an observation that the execution of the decree was never obstructed by the predecessor-in-title of the petitioners in terms of the report of the Bailiff. At this belated stage, therefore, there was no question of permitting impleadment of the petitioners. The impugned order itself has observed that no prejudice as such will occasion the petitioners, as the petitioners have already instituted suit for declaration and injunction.

4] It is however, made clear that none of the observations in the impugned order or for that matter non-entertainment of the present petition shall in any manner prejudice the petitioners, in pursuit of their suit for declaration of injunction. The same should be decided decided on its own merits and in accordance with law.

5] With the aforesaid observations, this petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

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CERTIFICATE

“I certify that this Order uploaded is a true
and correct copy of original signed Order.”