

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

WRIT PETITION NO. 5999 OF 2012

M/s.MOS Pharma Pvt. Ltd.

... Petitioner

v/s

M/s.Tiles and Styles India Pvt. Ltd.

... Respondent

Mr.Sukand Kulkarni for the petitioner.

Mr.Vilas Jadhav i/by vinod B. singh and Sachin Joshi for the respondent.

CORAM: NITIN M. JAMDAR, J.

DATED : 18TH MARCH, 2015

PC.:

Heard learned counsel for the parties.

2. By this writ petition, the petitioner challenges the order passed by the learned Small Causes Court Judge, Mumbai, dated 9 May 2012, rejecting the application for review of the order dated 2 February 2011.

3. The petitioner has filed a suit in the Small Causes Court at Mumbai. In this suit, the petitioner had taken out an application for appointment of a Receiver, an injunction against the respondent and calling upon the respondent to deposit the compensation. The

respondent took a preliminary objection to the maintainability of the suit. According to the respondent, the Small Causes Court did not have jurisdiction to decide the suit. The learned Judge, by an order dated 2 February 2011 adjourned the matter for evidence on preliminary issue and also deferred the hearing of the application filed by the petitioner for appointment of the Receiver, injunction and deposit of the compensation. The petitioner thereafter filed a petition for review which was rejected on 9 May 2012.

4. The learned counsel for the petitioner submitted that, in the meanwhile, the respondent has surrendered the premises and the question now remains of the arrears. He submitted that the preliminary issue which was directed to be decided by order dated 2 February 2011, is still not decided. It is submitted that neither the preliminary issue is being heard nor the respondent has paid any amount towards arrears.

5. In view of the subsequent development, I am of the opinion that the petition can be conveniently disposed of by directing the learned Small Causes Court Judge to decide the application on the preliminary issue which is pending since the year 2011, within a period of three months from today, as keeping those proceedings pending would be unfair to the petitioner. It is clarified that, if the application is not decided within three months from the receipt of the writ, the learned Small Causes Court Judge will take up the application of the petitioner as regard its monetary claim for

consideration. Both parties will cooperate with the Small Causes Court Judge for early disposal of the application adhering to the time bound direction given above.

6. The writ petition is accordingly disposed of on the above terms. All contentions as regard the monetary claim of the petitioner are kept open.

(NITIN M. JAMDAR, J.)