

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 395 OF 2009

M/s. Aboli Estates and anr. .. Applicants

vs.

M/s. Shreenathji Developers and ors. .. Respondents

Mr. Ram Apte, Senior Advocate a/w. Mr. Girish Paryani for the Applicants.

CORAM : M. S. SONAK, J.

DATE : 7 May, 2015.

P.C. :-

1] This Civil Revision Application is directed against the order dated 6 July 2009, by which the Civil Judge Senior Division, Kalyan has dismissed the applicants' applications at Exhibits-28 and 35 in Special Civil Suit No. 128 of 2006 seeking rejection of the plaint on the ground of bar contained in Section 69 (2) of the Indian Partnership Act, 1932 (said Act).

2] If the impugned order is perused, it is clear that the learned Civil Judge has broadly transcribed the submissions of the parties and has finally concluded that there is no merit in the written argument filed by and on behalf of the applicants. There is no consideration of the real issue which arose, namely, whether the suit as instituted indeed arose from a contract, which the plaintiffs, admittedly an unregistered firm, were seeking to enforce by way of suit.

3] In the aforesaid circumstances, considering that none appear for the respondents-plaintiffs though served, interest of justice would

be met, if the impugned order dated 6 July 2009 is set aside and the matter is remitted to the learned Civil Judge for fresh decision on the applications at Exhibits-28 and 35 taken out by the applicants.

4] Accordingly, the impugned order dated 6 July 2009 is set aside. The matter is remitted to the learned Civil Judge for fresh decision on Exhibits-28 and 35 in Special Civil Suit No. 128 of 2006.

5] The learned Civil Judge is directed to decide the said applications as expeditiously as possible and in any case within a period of six months from today.

6] The applicants to appear before the learned Civil Judge on 15 June 2015 and produce an authenticated copy of this order before the Civil Judge.

7] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

8] All concerned to act upon an authenticated copy of this order.

(M. S. SONAK, J.)

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