

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8969 OF 2014

Smt. Laxmi Bai Ravji Chheda & Ors. .. Petitioners
vs.
Ajay Kumar B. Agarwal & Anr. .. Respondents

Mr. Pankaj Savant – Senior Advocate with Sheeja John i/b. M/s. M.
P. Savla & Co. for Petitioners.
Mr. P. S. Dani – Senior Advocate for Respondents.

CORAM : M. S. SONAK, J.
DATE : 10 AUGUST 2015

P.C. :-

- 1] Rule. By consent and at the request of the learned counsel for the parties, Rule is made returnable forthwith.
- 2] This petition challenges orders dated 7 March 2014 and 1 April 2014 made by the appellate bench of the Small Causes Court.
- 3] The order dated 7 March 2014 merely admits appeal no. 22 of 2014 filed by the respondents and the order dated 1 April 2014 determines Rs.15,000/- as reasonable compensation which the respondents have been directed to deposit for availing interim relief.
- 4] Mr. Savant, the learned Senior Advocate for the petitioners submits that in this case serious allegation was made with regard to

certain interpolations on the certified copy of the impugned order. The appeal Court, by its order dated 12 February 2014 had in fact kept the issue of limitation open. However, without adverting to the petitioners objections, by the order dated 7 March 2014, the appeal has been admitted. There is no consideration whatsoever of the issues raised by the petitioners in the context of interpolations to the certified copy of the impugned order.

5] In the context of order dated 1 April 2014, Mr. Savant pointed out that the petitioners had placed comparable instances on record. The respondents placed no material whatsoever on record. The appeal Court, without any discussions on why the comparable instances produced by the petitioners should not form the basis, has proceeded to determine the compensation at a much lower rate.

6] Mr. P. S. Dani, the learned Senior Advocate for the respondents submitted that the issue of limitation has been kept open and the same can always be decided at the stage of final hearing of the appeal. That apart, Mr. Dani submitted that the determination by the impugned order dated 1 April 2014, though not very clearly stated therein, appears to be on *ad hoc* basis and until both parties produce material on record.

7] Having heard the learned counsel for the parties, and perused the record, this petition can be disposed of by issuing suitable clarifications / directions.

8] There is no reason to interfere with the order dated 7 March 2014. However, it is clarified that merely because the appeal is admitted, the decision on the question of limitation is not to stand concluded. The appeal Court to take into consideration the objections raised by the petitioners and the respondents response to the same. Further, during the pendency of the appeal, the petitioners are at liberty to approach the Small Causes Court which has issued the certified copy and to seek some clarification in the context of alleged manipulations on the certified copy. Although, the certified copy has been kept in a sealed cover by the appellate bench, the clarification can always be obtained on the basis of zerox copy. If certified copy is absolutely necessary, the petitioners are at liberty to apply to the appeal Court for transmission of the same to the Small Causes Court. All this material will be taken into consideration by the appeal Court at the stage of final hearing of the appeal.

9] Although there is substance in the contention of Mr. Savant in the context of the order dated 1 April 2014, there is no reason to interfere with the same, at this stage. The order dated 1 April 2014

is to be treated as an ad interim direction. The petitioners as well as the respondents shall be at liberty to place, if they choose, further and other material on record within a period of eight weeks from today before the appellate bench to assist the appellate bench in determining the reasonable compensation. Upon such material being placed, the appellate bench to decide the question of reasonable compensation by applying the principles set out by the Apex Court in the cases of *Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd.*¹ and *State of Maharashtra & Anr. vs. M/s. Super Max International Pvt. Ltd. & Ors.*², as expeditiously as possible.

10] Accordingly, Rule is made absolute to the aforesaid extent only. There shall be no order as to costs.

11] All concerned to act on basis of authenticated copy of this Order.

(M. S. SONAK, J.)

Chandka

1 (2005) 1 SCC 705

2 2009 (5) ALL MR 1001