

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7847 OF 2015
WITH
CIVIL APPLICATION NO. 2271 OF 2015

Kalpesh Kumar Parmanand Dave .. Petitioner

vs.

M/s. Ish Homes Private Limited .. Respondent

Mr. Mayur Khandeparkar i/b Mr. Tanvir A. Shaikh for the Petitioner.
Mr. Khan Javed Akhtar for the Respondent.

CORAM : M. S. SONAK, J.

DATE : 28 SEPTEMBER 2015.

P.C. :-

1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] The challenge in this petition is to the order dated 31 July 2015 made by the Small Causes Court, Mumbai allowing the Respondent's Application at Exhibit-114. By the impugned order, the plaint has been permitted to be amended at the stage when evidence in the matter was complete and the matter was posted for final arguments. In fact, the records indicate that the Defendant had already argued the matter.

3] In Miscellaneous Application No. 223 of 2015, this Court has permitted the transfer of R.A.E.& R. Suit No. 601/956 of 2007 from the Court of learned Judge, who made the order dated 31 July 2015, to some other Court to be assigned by the Chief Judge of the Small Causes Court, Mumbai. Prior to making the said order, explanation was also called for from the learned Judge. The transfer was ordered, without delving deep into the explanation submitted, particularly as the learned counsel for the Respondent made it clear that the Respondent had no objection to the matter being transferred to any other Judge.

4] In view of the aforesaid circumstances, particularly considering that lack of confidence was expressed in the learned Judge, who has made the impugned order dated 31 July 2015, it would be in fitness of things, if the impugned order is set aside and the Judge to which the proceedings now stand transferred, decides the Application at Exhibit-114 afresh in accordance with law. At this stage, it will not be appropriate for this Court to express any opinion on the merits and de-merits of the case. Accordingly, the impugned order dated 31 July 2015 is set aside. The Small Causes Court is directed to reconsider the Application (Exhibit-114) and to decide

the same in accordance with law. The Small Causes Court be neither influenced by the order dated 31 July 2015 nor the circumstance that this Court has set aside the order dated 31 July 2015. The Small Causes Court to decide the Application at Exhibit-114 on its own merits and in accordance with law.

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

6] In view of disposal of Writ Petition No. 7847 of 2015, Civil Application No. 2271 of 2015 does not survive and same is disposed of.

(M. S. SONAK, J.)

CERTIFICATE

**“Certified to be true and correct copy of
original signed Judgment/Order.”**