

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1507 OF 2016
WITH
CIVIL APPLICATION NO. 4194 OF 2016
IN FA NO. 1507 OF 2016

Shri Jadhavji Lalji Shah (Anchorwala)
& others ... Appellants.

V/s.

M/s. Krishna Developers & others ... Respondents.

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Mr. Pankaj Savant, Senior Advocate a/w Ms. Shreeja John i/b. M/s. M. P. Savla & Co. for the Appellants.

Mr. A. M. Saraogi for Respondent No.1.

Mr. S. P. Thorat for Respondent No.4.

Mr. Anoop V. Patil for Respondent No.6.

Mr. Madhur S. Surana for Respondent No.7.

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CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : OCTOBER 17, 2016.

P.C.:

1. Not on Board. Taken on Board.
2. This appeal is preferred against the judgment and order dated 07.11.2015 passed by the City Civil Court, Mumbai, in Suit No.9835 of 1999, thereby dismissing the suit.
3. It is pointed out that the suit was proceeded without written statement and even without cross-examination of witness of the appellants. The ground, on which the Suit was dismissed, was only that some original documents were not produced, though, according to learned counsel for the Appellants, those were already marked as exhibits.

4. Whatever it may be, the fact remains that the suit is proceeded without written statement and without cross-examination of the appellants' witness examined in the trial Court. In such a situation, as all the respondents, who are the original defendants, are appearing in the appeal, it would be necessary that the matter should be decided on merits by the trial Court, so that an opportunity is given to all the respondents/defendants to file their written statements and contest the suit on merits.

5. In view thereof, the appeal is allowed. The judgment and decree passed by the trial Court on 07.11.2015, dismissing Suit No.9835 of 1999 is hereby quashed and set aside. The suit is remanded back to the trial Court with liberty and an opportunity to the respondents to file their written statements thereto and the trial Court, thereafter, to decide the suit on its own merits.

6. In view of disposal of the First Appeal, the Civil Application does not survive and the same stands disposed of.

(DR. SHALINI PHANSALKAR-JOSHI, J.)