

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 42 OF 2016

Mr. Dushyant Shyamaldas Sanghavi	...Applicant
<i>Versus</i>	
M/s New Standard Chemical Co Pvt Ltd	...Respondent

....
Mr.C.N. Chavan, Advocate for the Applicant.
Mr. Sandeep A. Bhagwat, Advocate for the Respondent.
....

CORAM : R. G. KETKAR, J.

DATE : 12th July, 2016

P.C.

1. Heard Mr. C.N. Chavan, learned Counsel for the applicant and Mr. S.A. Bhagwat, learned Counsel for the respondent, at length.

2. By this application under Section 115 of Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicant has challenged the judgment and decree dated 27.2.2014 passed by the learned Judge, presiding over Court Room No.7 of the Court of Small Causes at Mumbai in Marji Application No.696/12 in R.A.E. Suit No.1051/1598 of 2009 as also the judgment and decree dated 30.11.2015 passed by the Appellate Bench of the

Small Causes Court at Mumbai in 2(b)(iv) Misc. Appeal No.238 of 2014. By these orders, the Courts below condoned the delay in filing the application under Order IX Rule 13 of C.P.C., but, refused to set aside the exparte decree dated 24.6.2011 passed in R.A.E. Suit No.1051/1598 of 2009.

3. Rule. Mr. Bhagwat waives service. At the request and by consent of the parties, Rule is made returnable forthwith and the application is taken up for final hearing.

4. Mr. Chavan states that the defendant is present in the Court. He has tendered a photo copy of the PAN Card of the defendant, which is taken on record and marked 'X' for identification. Upon taking instructions from the defendant, he states that the defendant is in exclusive use, occupation, possession and enjoyment of room No.2, Ground Floor, Standard Building No.1, 124/126, V.V. Chandan Street, Mumbai -400 003 (for short, 'suit premises') and that the defendant has neither created third party interest nor handed over possession of the suit premises to any other party. In fact the defendant has already filed undertaking to this effect in this Court in pursuance of the order dated 29.1.2016. Statement made by

Mr.Chavan, on instructions, are recorded.

5. Upon taking instructions from the defendant, Mr.Chavan submits that in respect of the suit premises Court Receiver may be appointed. The defendant will hand over vacant and peaceful possession of the suit premises to the Court Receiver within two weeks from today.

6. Mr. Bhagwat has tendered communication dated 9.7.2016 addressed by the respondent to him, which is taken on record and marked 'Y' for identification.

7. Mr. Bhagwat submitted that the respondent may be appointed as an agent of the Court Receiver without payment of the royalty and security and subject to payment of statutory charges. He submits that Court Receiver may be directed to hand over possession of the suit premises to the respondent forthwith as agent of the Court Receiver.

8. Learned Counsel for the parties submit that by consent the impugned order may be set aside and exparte decree dated 24.6.2011 may also be set aside and R.A.E. Suit No.1051/1598 of 2009 may be restored to the file of the trial

Court to its original position.

9. Mr. Chavan assures that within four weeks from today the defendant will file written statement with advance copy to other side. In view thereof, by consent of the parties, Civil Revision Application is disposed of in following terms:

- [i] Impugned judgment and decree dated 27.2.2014 passed by the learned Judge, presiding over Court Room No.7 of the Court of Small Causes at Mumbai in Marji Application No.696/12 in R.A.E. Suit No.1051/1598 of 2009 as also the judgment and decree dated 30.11.2015 passed by the Appellate Bench of the Small Causes Court at Mumbai in 2(b)(iv) Misc. Appeal No.238 of 2014, are set aside. Exparte decree dated 24.6.2011 passed in R.A.E. Suit No.1051/1598 of 2009 is also set aside and said Suit is restored to the file of the learned trial Judge to its original position.
- [ii] Court Receiver, High Court, Bombay is appointed as Court Receiver in respect of the suit premises with all the powers under Order XL of C.P.C..

- [iii] Defendant shall hand over vacant and peaceful possession of the suit premises within two weeks from today to the Court Receiver. Court Receiver will in turn hand over possession to the plaintiff forthwith after obtaining possession from the defendant and will appoint the plaintiff as agent of the Court Receiver without payment of any royalty or security. Respondent shall however pay the statutory charges regularly.
- [iv] Defendant shall file written statement within four weeks from today with advance copy to the plaintiff. All contentions of the parties on merits are expressly kept open.
- [v] Liberty is reserved with the parties to apply to trial Court for expeditious disposal of the Suit. If such an application is made, learned trial Judge will pass appropriate order.
- [vi] Rule is made absolute in aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)