

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.204 OF 2016

National Hindu Lodge through its Proprietor
Mr. Vashishthakumar Bhardwaj Thaker ... Applicant
Vs.
Kanchanshri Investments Pvt. Ltd. through its
Director Pankaj Vimalchand Golecha ... Respondent

Mr. P. S. Dani, Senior Advocate a/w. Mr. Gautam T. Kanchanpurkar for Applicant.
Mr. Pradeep Sancheti, Senior Advocate a/w. Mr. Reshant Shah i/b. Lex Conseiller for Respondent.

CORAM : R. G. KETKAR, J.
DATE : 24TH OCTOBER 2016

P.C. :

Heard Mr. Dani, learned Senior Counsel for the applicant and Mr. Sancheti, learned Senior Counsel for the respondent at length. Rule. M/s. Lex Conseiller waives service for respondent. In view of the controversy as also at the request and by consent of the parties, Rule is made returnable forthwith and the C.R.A. is taken up for final hearing.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908, applicant, hereinafter referred to as 'defendant', has challenged the judgment and decree dated 19.11.2015 passed by the learned Appellate Bench of the Small Causes Court in Appeal No.564 of 2008. By that order, the appellate Court allowed the appeal preferred by the respondent, hereinafter referred to as 'plaintiffs', and quashed and set aside the judgment and decree dated 30.06.2008 passed by the learned Judge presiding over Court Room No.10 of the Court of Small Causes at Mumbai in R.A.E.Suit No.318/549 of 2002. The appellate Court decreed the Suit and directed the defendant to deliver vacant and peaceful possession of rooms No.1, 4 to 19 on the first floor in Golecha

House (Fateh Niwas) situate at 124-134A, Raja Ram Mohan Roy Road, Prarthana Samaj, Mumbai 400 004 (for short 'suit premises') within three months from the date of passing of that order. Though the learned trial Judge held that plaintiffs have established that the requirement is reasonable and bonafide, the Suit was dismissed on the ground that the Director of Plaintiffs was not authorized to file the Suit. As against this, the appellate Court decreed the Suit on the ground that defendant did not raise this plea in written statement and even otherwise, the Director of the plaintiffs was authorized to institute the Suit.

3. Mr. Dani submitted that plaintiffs examined P.W.1. Defendant did not cross-examine the said witness. Defendant also did not lead evidence in support of its case. He, therefore, submitted that the orders passed by the Courts below may be set aside and the Suit may be restored to the file of the trial Court. Defendant may be permitted to cross-examine P.W.1 and any other witness that may be examined by the plaintiffs. Mr. Dani further states that defendant will hand over possession of the suit premises to the Court Receiver, who in turn, may induct plaintiffs as agent of the Court Receiver.

4. Mr. Sancheti, upon taking instructions from plaintiffs' Director Pankaj V. Golecha, who is present in the Court, states that the orders passed by the Courts below may be set aside and liberty may be reserved to the plaintiffs to examine other witnesses, if so advised. He further submits that the learned trial Judge may be directed to dispose of the Suit in a time bound manner. He has tendered photocopy of the driving licence of Mr. Pankaj Golecha, which is taken on record and marked 'X' for identification. Learned Counsel for the parties assure that they will extend full co-operation for recording of evidence. Parties agree that they will appear before the learned trial Judge on 15.11.2016 and for that purpose, no fresh notice be issued to them.

5. In view thereof, by consent of the parties, C.R.A. is disposed of in the following terms:

- a. Receiver, High Court, Bombay is appointed as Court Receiver in respect of the suit premises;
- b. Defendant shall serve / file proceedings of this C.R.A. on the office of the Court Receiver, High Court, Bombay and shall deposit Rs.10,000/- towards fees of Court Receiver in terms of Rule 591 of Bombay High Court (Original Side) Rules;
- c. Defendant shall handover possession of the suit premises to the Court Receiver on or before 31.10.2016. Court Receiver, in turn, shall put the plaintiffs in possession of the suit premises without payment of any royalty and security;
- d. While taking possession, the Court Receiver shall prepare report and take photographs and place the report on record of the trial Court;
- e. Plaintiffs will go on paying statutory dues to the concerned authorities;
- f. Orders passed by the Courts below are set aside and the Suit is restored to the file of the learned trial Judge;
- g. The learned trial Judge will proceed on the footing that the Suit instituted by the plaintiffs through its Director is validly instituted and the Director was authorized to file the Suit;
- h. The learned trial Judge will permit the plaintiffs to examine further witnesses, if so advised and permit the defendant to cross-examine P.W.1 and any other witnesses to be examined by the plaintiffs;
- i. Defendant is permitted to lead evidence in respect of its case. Defendant is relieved from the statement recorded in the order dated 01.04.2008 to the effect that he is not going to examine any witness or lead any evidence on behalf of the

defendants;

j. Parties will extend full co-operation for recording evidence and will not seek undue adjournments. Parties will appear before the learned trial Judge on 15.11.2016 and for that purpose, no fresh notice be issued to them;

k. The learned trial Judge is requested to dispose of the Suit as expeditiously as possible and in any case within 6 months from the appearance of the parties.

l. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)

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