

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 5459 OF 2016

Jameel Khwaja Akhtar And Anr. ...Petitioners

Versus

Dhiraj Shamji Oza ...Respondent

....

Mr.Amardev J. Uniyal, Advocate for the Petitioners.

Mr. Samji Joseph i/b. Uni Lex, for the respondent.

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CORAM : R. G. KETKAR, J.

DATE : 25th August, 2016

P.C.

1. Heard Mr. Amardev J. Uniyal, learned Counsel for the petitioners and Mr. Samji Joseph, learned Counsel for the respondent, at length.

2. Rule. Mr.Joseph waives service. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

3. By this Petition under Article 227 of the Constitution of India, 1950, the petitioners have challenged the judgment and order dated 15.1.2016 passed by the Appellate Bench of the Small Causes Court at Mumbai in Revision Application No.100/2015. By that order, Appellate Court allowed the Revision Application preferred by the respondent, hereinafter referred to as the 'defendant', and

quashed and set aside the judgment and order dated 16.1.2015 passed by the learned trial Judge, presiding over Court Room No.20 of Small Causes Court at Mumbai below Exhibit-19 in L.A.E. & C. Suit NO.135/167 of 2013 and directed the trial Court to frame preliminary issue under Section 9-A of C.P.C. about jurisdiction as prayed for in application Exhibit-19.

4. In support of this Petition, Mr. Uniyal has invited my attention to the findings of the Appellate Court recorded in paragraphs-16 and 19. He submitted that Appellate Court has construed the words 'or otherwise' without considering the decision of this Court in the case of ***Immigrants Ideal Producers Co-operative Society Ltd. & Anr. vs. Jahanara Moiz Dalal, 2004(1) Mh.L.J. 910*** and in particular paragraph-14 thereof. He, therefore, submitted that Petition requires consideration.

5. On the other hand, Mr. Joseph supported the impugned order. He further submitted that as Appellate Court has not considered the decision of this Court in ***Immigrants Ideal Producers Co-operative Society Ltd. (supra)***, impugned order may be set aside and the revision application may be restored to the file of Appellate Court. All contentions of the parties in Revision Application may be kept open. Learned Counsel state that parties will appear before the Appellate Court on 30.8.2016 and for that purpose no fresh notice be issued to them.

6. In view thereof, by consent of parties, Petition is disposed of as under :

- [i] Impugned order dated 15.1.2016 passed by the Appellate Bench of the Small Causes Court at Mumbai in Revision Application No.100/2015 is set aside and Revision Application is restored to the file of Appellate Court.
- [ii] Parties agree that they will appear before Appellate Court on 30.8.2016 and for that no fresh notice be issued to them.
- [iii] While deciding Revision Application, Appellate Court will deal with the decision of this Court in ***Immigrants Ideal Producers Co-operative Society Ltd. (supra)***.
- [iv] All contentions of the parties on merits are expressly kept open.
- [v] Rule is made absolute in aforesaid terms with no order as to costs.
- [vi] All parties, including Appellate Court, to act upon the authenticated copy of this order. Order accordingly.

(R. G. KETKAR, J.)