

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 108 OF 2016

Ramaben Laljibhai Kapadia ..Applicants
deceased, through L.R :
1a. Mrs Geeta Suryakant Parikh
and Ors

Vs

Killick Nixon Ltd and Anr. .. Respondents

Mr. K.M.Sangani, Advocate for Applicants.
Mr.Kevin A. Chettiar, Advocate for Respondent no.1.

CORAM : R.G.KETKAR,J.
DATE : 15/12/2016

PC:

1. Heard Mr. K.M.Sangani, learned counsel for the applicants and Mr. Kevin Chettiar, learned counsel for respondent no.1 at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicants, hereinafter referred to as 'defendants', have challenged the Judgment and order dated 8.12.2014 passed by the learned Judge, City Civil Court, Mumbai in Short Cause Suit No.9484 of 1989. By that order, the learned trial Judge repelled the submission advanced by the defendants that the suit is under section 6 of the Specific Reliefs Act, 1963 (for short, 'Act') and since it is not instituted within six months from the date of dispossession, the same is liable to be dismissed. After considering the material on record, the learned trial Judge held that the suit is not under section 6 of

the Act and is maintainable.

3. In support of this Application, Mr. Sangani has taken me through the averments made in the plaint as also written statement. In particular, he submitted that the suit is essentially between licensor and licensee for recovery of possession and, therefore, the City Civil Court has no jurisdiction to entertain and try the suit. Though this case was specifically pleaded in paragraph 5 of the written statement, the learned trial Judge has not considered this aspect while passing the impugned order. He, therefore, submitted that the learned trial Judge may be directed to consider whether the Civil Court has jurisdiction to entertain and try the suit between licensor and licensee.

4. On the other hand, Mr. Chettiar has supported the impugned order. He submitted that the only contention advanced by the defendant was that the suit is under section 6 of the Act and as it is not instituted within six months from the date of dispossession, it is liable to be dismissed. The matter was heard at length on 13.12.2016 and was kept today so as to enable Mr. Chettiar to obtain instructions as to whether the plaintiff is willing to consent for directing the City Civil Court to consider the issue about suit between licensor and licensee. Upon taking instructions, he states that the plaintiff is agreeable for such direction. He, however, submits that it may be clarified that as far as contention of the defendant that the suit is under section 6

of the Act be concluded and the said issue shall not be reopened.

5. In view thereof, by consent of the parties, impugned order is modified in the following terms:

(i) The findings recorded by the learned trial Judge that the suit is not under section 6 of the Act, is upheld;

(ii) The learned trial Judge shall frame issue as regards jurisdiction of the civil court to entertain and try the suit on the ground that whether the suit is between licensor and licensee. No other issue shall be considered by the learned trial Judge.

(iii) Learned counsel for the parties state that next date of hearing before the trial Court is 4.1.2017. The learned trial Judge will decide this issue within four weeks from the date of appearance of the parties. Liberty is reserved to the plaintiff to take out appropriate proceedings for disposal of the suit in a time bound manner. If such application is taken out, the learned trial Judge will pass appropriate order keeping in mind the fact that the defendants are occupying the suit premises since 1974.

(R.G.KETKAR, J.)