

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4680 OF 2016

Beaufort (P) Ltd. .. Petitioner
-Versus-
Jehangir H.G.Jehangir & Anr. ..Respondents

Mr. P.K.Dhakephalkar, Senior Advocate i/b. Mr. Jaydeep Deo for petitioners
Mr. V.A.Thorat, Senior Advocate with Mr. Vaibhav Sugdhare , Ms. Viloma Shah and Mr. Ameya Deostale i/b. Hariani & Co. for respondents.

CORAM : R.G.KETKAR, J.

DATE : 19th September 2016.

P.C.

1] Heard Mr. P.K.Dhakephalkar, learned Senior Counsel for petitioners and Mr. V.A.Thorat, learned Senior Counsel for respondents at length.

2] By this petition under Article 227 of the Constitution of India, the petitioners have challenged the judgement and order dated 24th November 2008 passed by the learned Judge, Small Causes Court in Misc. Notice No.67 of 2008 in R.A.E. Suit No.728/1243/2001 as also the judgement and order dated 19th March 2016 passed by the Appellate Bench of the Small Causes Court in Misc. Appeal No.40 of 2009. By

these orders the courts below dismissed the application taken out by the defendants under Order XI Rule 13 of the Code of Civil Procedure, 1908 for setting aside ex parte judgement and decree dated 26th November 2007 passed by the trial court.

3] The matter was heard at length on 16th September 2016. During the course of hearing I have made a suggestion to the learned Counsel for parties to the effect that the defendants will hand over possession of the suit premises to the respondent plaintiffs. The plaintiffs will not create third party interest in the suit premises in any manner whatsoever and to that effect will file an undertaking. After the defendants hand over possession of the suit premises to the plaintiff, the impugned orders will be set aside and the suit will be restored to the file of the trial court. The plaintiffs will be permitted to examine witness/witnesses if they so desire. The defendants will be permitted to cross examine the plaintiffs' witnesses and also will be permitted to lead their evidence.

4] Mr.Dhakephalkar states that Mrs. Priti Gandhi, Director of the petitioner is present today in court. She has tendered photo copy of her pan card. The same is taken on record and marked "X" for identification. Mr. Sugdare for respondents states that respondent No.2 is present in court today. He has tendered a photo copy of his driving licence, which is

taken on record and marked “Y” for identification. Upon taking instructions from their respective clients, the learned Counsel for the parties state that by consent the impugned orders may be set aside and R.A.E. Suit may be restored to the file of the trial court.

5] In view thereof, by consent of the parties following order is passed:-

(I) The impugned orders dated 24th November 2008 passed by the trial court and 19th November 2016 passed by the appellate bench of small causes court are quashed and set aside;

(II) R.A.E. Suit No.728/1243/2001 is restored to the file of the trial court;

(III) Plaintiffs are permitted to examine any other witnesses, if they so desire. Defendants are entitled to cross examine plaintiffs witnesses who are already examined as also further witnesses, if any, to be examined by the plaintiffs;

(IV) Defendants are also permitted to lead their evidence;

(V) Defendants will hand over vacant and peaceful possession of the suit premises to the plaintiffs on or before 30th November 2016;

(VI) In the meantime, the defendants will neither create third party interest nor part with possession;

(VII) In the event of plaintiffs intending to create third party

interest, they will specifically set out pendency of the suit in the transactions to be entered into with third party. It will also be specifically provided for that the third party will be bound by the outcome of the suit and the third party will give undertaking to the trial court that it will abide by the outcome of the suit. The said undertaking will be accepted by the trial court;

(VIII) The plaintiffs will also file undertaking in the trial court to the effect that they will abide by the outcome of the suit. In the event the suit is dismissed, they will restore the possession back to the defendants forthwith;

(IX) Liberty to the parties to apply for expeditious disposal of the suit. If such an application is taken out the learned trial court will bear in mind the passing of decree in the suit in the year 2007 and decide the said application.

6] Rule is made absolutely accordingly. No costs.

(R.G.KETKAR, J)