

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 6646 OF 2016

Lacozy Motors Pvt. Ltd.

...Petitioner

Versus

Sumitra Amratlal Kocha

And Ors

...Respondents

....

Mr.Aashish Kamat a/w. Jay Joshi i/b. I.R. Joshi & Co., for the
Petitioner.

Mr.Ashutosh Kaushik i/b. Kaushik & Co. for Respondent No.7.

Mr. R.K. Thakkar, Advocate for Respondent No.8 and 9.

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CORAM : R. G. KETKAR, J.

DATE : 15th OCTOBER, 2016

P.C.

1. Heard Mr.Aashish Kamat, learned Counsel for the
Petitioner, Mr.Ashutosh Kaushik, learned Counsel for
respondent No.7 and Mr.R.K. Thakkar, learned Counsel for
respondents No.8 & 9, at length.

2. By this Petition under Article 227 of the
Constitution of India, the petitioner, hereinafter referred to
as the 'plaintiff' has challenged the judgment and order
dated 17.2.2016 passed by the learned Judge, presiding
over Court Room No.12 of the Court of Small Causes at
Mumbai below Exhibit-70 in R.A.D. Suit No.413/723 of
2004. By that order, the learned trial Judge rejected the
application Exhibit-70 made by the plaintiff *inter alia*

seeking for ad-interim relief against defendant No.7 and M/s. Bharti and Company as also appointment of Court Receiver.

3. Section 34 of the Maharashtra Rent Control Act, 1999 (for short, 'Act') lays down that notwithstanding anything contained in any law for the time being in force, an appeal shall lie from a decree or order made by the Court of Small Causes. Mumbai, exercising jurisdiction under section 33, to a bench of two Judges of the said Court which shall not include the Judge who made such decree or order. Proviso thereto lays down that no such appeal shall lie from, (a) a decree or order made in any suit or proceeding in respect of which no appeal lies under the Code of Civil Procedure, 1908.

4. I have perused the prayers made in application at Exhibit-70. Perusal of prayer made in the application shows that the plaintiff has prayed for :

- (a) appointment of Receiver,
- (b) an injunction restraining defendant No.7 and M/s. Bharti and Company from carrying out any further additions, alteration and / or renovation work in the suit premises,
- (c) mandatory order directing defendant No.7 to restore the status of the suit premises as on 5.5.2004,
- (d) injunction restraining defendant No.7 from parting

with possession and/or creating any third party rights and/or allowing the suit premises to be used by the third parties including M/s. Bharti and Company,

- (e) injunction restraining M/s. Bharti and Company from claiming to be in possession of suit premises and from using suit premises or any part thereof;
- (f) mandatory injunction directing defendant No.7 and M/s. Bharti and Company to remove the existing board displayed in the suit premises reading as “Dorigres Ceremics – Bharti & Company”.

5. In view of proviso (a) to Section 34 of the Act, against the impugned order, the plaintiff has an equally efficacious alternate statutory remedy by filing appeal under Section 34 of the Act read with Order XLIII of C.P.C. In view thereof, the Petition is liable to be dismissed on the ground of maintainability. Accordingly, Petition is dismissed reserving liberty to the plaintiff to institute appeal as contemplated by Section 34 of the Act read with Order XLIII of C.P.C. Order accordingly.

(R. G. KETKAR, J.)