

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 404 OF 2016

Deepak Jyoti Co-operative Housing
Society

...Applicant

Versus

Shri Krishnakant Chandrakumar Jaitha,
And Others

...Respondents

....

Mr.P.S. Dani, Senior Advocate a/w. Ms.Ferzana Behrumkandind,
Ms. Bharati Bhansali i/b. FZB & Asso. for the Applicant.

Mr. Sanjiv A. Sawant, Advocate for Respondents No.1 to 5.

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CORAM : R. G. KETKAR, J.

DATE : 17th OCTOBER, 2016

P.C.

1. Heard Mr. P.S. Dani, learned Senior Counsel for the applicant and Mr.Sanjiv A. Sawant, learned Counsel for respondents No.1 to 5, at length.

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

3. By this application under Section 115 of Code of Civil Procedure, 1908 (for short, 'C.P.C.') the applicant, hereinafter referred to as 'defendant No.2' has challenged the judgment and order dated 6.5.2016 passed by the learned Judge, presiding over Court Room No.9 of the Court of Small Causes at Bombay in L.E. Suit No.133/153 of 2006. By that order, the learned trial Judge decided the preliminary issue and held that the Small Causes Court has jurisdiction to entertain and try the suit.

4. In support of this application, Mr. Dani has invited my attention to :

- [i] Paragraph-12 of the plaint.
- [ii] Prayers in the suit.
- [iii] Schedule, which is divided in Part I and Part II, annexed to the plaint.
- [iv] Lease deed dated 29.7.1898.
- [v] Paragraph-6 of the impugned order.

5. Mr. Dani submitted that in paragraph-12, the plaintiffs specifically contended that the lease deed executed by the plaintiffs in favour of defendant No.1 on 29.7.1898 has expired and even otherwise the same is not renewed. After the lease has expired, defendant No.1 was only the monthly tenant of the plaintiffs. In other words, he submitted that the plaintiffs specifically contended that defendant No.1 is monthly tenant after expiry of lease. The

learned trial Judge, however, proceeded to observe in paragraph-6 that the relationship between the plaintiffs and defendant No.1 is that of licensor and licensee and the Court has to decide the controversy between licensor and licensee. He submitted that in pursuance of the covenant in the lease deed, the lessee viz. defendant No.1 was authorized to construct additional buildings and in pursuance thereof two buildings were constructed and members of defendant No.2 are occupying the buildings.

6. On the other hand, Mr. Sawant submitted that defendant NO.1 have constructed the buildings after expiry of the lease. As in paragraph-6, the learned trial Judge has observed that the relationship between the plaintiffs and defendant No.1 is that of licensor and licensee, the impugned order may be set aside thereby permitting the parties to lead evidence if they so desire. Upon taking instructions from Ms.Jagruti Mewada, instructing Advocate, Mr. Sawant submits that the impugned order may be set aside thereby directing the trial Court to permit the parties to lead evidence on preliminary issue only and thereafter decide the preliminary issue afresh.

7. In view thereof, by consent of parties, Civil Revision Application is disposed of in following terms :

(i) Impugned order dated 6.5.2016 is set aside and the

learned trial Judge will decide the preliminary issue afresh.

- (ii) Parties are permitted to lead evidence on the preliminary issue only, if they so desire.
- (iii) The learned trial Judge is requested to decide the preliminary issue within three months from today.
- (iv) All contentions on merits are expressly kept open.
- (v) Rule is made absolute in aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)