

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7075 OF 2015

Banoobai Noshirwan Mody (decd.) through
Aban Noshirwan Mody ... Petitioner
Vs.
Dhun Rustom Jamshedjee (decd.) through
Jimmy Rustom Jamshedjee Sethana ... Respondent

Ms Pooja Kharat i/b. Dahibawkar & Co. for Petitioner.
Ms Nisha Mehra for Respondent.

CORAM : R. G. KETKAR, J.
DATE : JULY 1, 2016

P.C. :

Heard Ms Kharat, learned Counsel for petitioner and Ms Mehra, learned Counsel for respondent at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 06.02.2015 passed by the appellate Bench of the Small Causes Court at Mumbai below exhibit-25 in (A-1) Appeal No.130 of 2005. By that order, the appellate Court allowed the application made by the appellant (original plaintiff) under Order 41, Rule 27 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') and allowed production of old ration cards bearing No.22987 and 009248 and the new ration cards bearing No.250311 and 760173 and were marked as exhibits.

3. In support of this Petition, Ms Kharat submitted that the Suit instituted by the appellant was dismissed by the trial Court on 23.12.2004. She invited my attention to paragraph 22 of that order wherein the learned trial Judge has referred to the old ration cards as also the fact that the ration card standing in the name of original plaintiff

Ms Dhunbai, since deceased, was renewed after her death and the new ration card was issued in the year 1987. The said ration card was standing in the name of Jimmy Sethna. She also invited my attention to the application dated 30.11.2004 made by the appellant before the trial Court for producing the new ration cards. By order dated 30.11.2004, the learned trial Judge rejected the application. She submitted that the appellant (respondent herein) did not challenge that order. The appellate Court was, therefore, not justified in allowing the application.

4. On the other hand, Ms Mehra supported the impugned order. She has taken me through the impugned order and submitted that for the reasons recorded in paragraphs 4 to 7, the appellate Court was justified in allowing the appeal.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. In paragraph 4 of the impugned order, the appellate Court recorded that during the course of evidence before the trial Court, appellant had produced ration card bearing No.22987 issued in the name of his father and the other ration card bearing No.009248 issued in the name of Jimmy Sethna. Both the ration cards were marked as exhibit-E collectively. In lieu of policy of the State Government, the old ration card was converted into white ration card on the basis of income. Old ration card bearing No.009248 was converted into white ration card No.760173. In paragraph 6, the appellate Court recorded a categorical finding that the old ration cards were converted into new ration cards in view of the Government policy and as old ration cards were already taken on record and were marked as exhibit-E collectively, the learned trial Judge should have permitted production of new ration cards. The learned trial Judge, however, rejected production of new ration cards on

the ground that they were sought to be produced at the stage of final arguments. The appellate Court, therefore, permitted production of new ration cards.

6. For the reasons recorded in paragraphs 6 and 7 of the impugned order, I do not find that the appellate Court committed any error in passing the impugned order. Hence, Petition fails and the same is dismissed. It is made clear that where a decree is challenged by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the proposed proceedings as contemplated by Section 105(1) of C.P.C.

(R. G. KETKAR, J.)

Minal Parab