

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition NO. 6805 OF 2015

Smt. Eugene Vaz	...Petitioner
<i>Versus</i>	
Smt. Shalini Vishwanath Vaigankar	
And Ors.	...Respondents
....	
Mr. J.M. D'Silva, Advocate for the Petitioner.	
Mr. A.R. Singh, Advocate for the Respondents.	
....	

CORAM : R. G. KETKAR, J.

DATE : 02nd August, 2016

P.C.

1. Heard Mr. D'Silva, learned Counsel for the petitioner and Mr. Singh, learned Counsel for the respondents, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'defendant No.1(b)' has challenged the judgment and order dated 5.5.2015 passed by the learned trial Judge, presiding over Court Room No.37, of Court Small Causes at Mumbai [Bandra Branch] below Exhibit-41 filed by the respondents, hereinafter referred to as the 'plaintiffs', and directed that the articles of the defendants lying in the suit premises, as per inventory prepared by the

bailiff of the Court be taken in the custody of the Court by the Appraiser of the Court. The Appraiser of the Court was directed to initiate process of auction of the articles in accordance with law and the sale proceeds be deposited in the Court. The learned trial Judge also granted liberty to the defendants to withdraw the amount of auction from the Court.

3. By separate order passed by me today in Writ Petition No.8061 of 2016, I have dismissed the Writ Petition challenging the judgment and order dated 14.1.2016 passed by the Appellate Bench of Small Causes Court at Mumbai (Bandra Branch) in Marji Application No.152 of 2015. By that order, the Appellate Court rejected the application made by defendant No.1(b) for condoning the delay of six years ten months and six days in taking out the application for restoration of Appeal No.142/2008 which was dismissed in default on 15.7.2008.

4. Mr. D'Silva, therefore, submitted that the order passed in Writ Petition No.8061/2016 will govern the fate of this Petition. Defendant No.1(b) is present in the Court. She states that she is not willing to take back the articles lying in the suit premises. In view thereof, I do not find that the learned Judge

committed any error in passing the impugned order. Once the decree is executed by the respondents/plaintiffs and the possession of the suit premises is taken on 7.1.2015, defendant No.1(b) cannot be allowed to keep her articles in the suit premises. As noted earlier, defendant No.1(b) is not willing to take back her articles. In view thereof, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Deshmane (PS)