

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7739 OF 2016

M/s Ramnaraian and Son and
Anr.

Petitioners

Vs

Ramesh S. Sharma and Ors

.. Respondents

Mr. Javed Akhtar Khan, Advocate for Petitioners.

Mr. Vineet B. Naik, Senior Advocate a/w Kartikeya Desai, Siddarth Bafna and Ms A. Bhargava, i/b Kartikeya Associates, Advocates for Respondent no.1.

CORAM : R.G.KETKAR,J.

DATE : 04/08/2016

PC:

1. Heard Mr. Javed Akhtar Khan, learned counsel for the petitioners and Mr. Vineet Naik, learned senior counsel for respondent no.1 at length. Mr. Khan seeks leave to delete respondents no. 2 to 4 on the ground that respondent no.1 being original defendant no.2, is the only contesting respondent in this petition. On the oral application made by Mr. Khan, leave to delete respondents no.2 to 4 is granted. Amendment shall be carried out forthwith.

2. Rule. Mr. Desai waives service for respondent no.1. At the request and by consent of the parties, Rule is made returnable forthwith and petition is taken up for final hearing.

3. By this petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as 'plaintiffs', have

challenged the Judgment and order dated 13.6.2016 passed by the Appellate Bench of the Small Causes Court at Mumbai in Revision Application No.63 of 2016. By that order, the Appellate Court partly allowed the Revision Application preferred by respondent no.1, hereinafter referred to as 'defendant no.2', and quashed and set aside the Judgment and order dated 7.5.2016 passed by the trial Court and allowed Application Exhibit-74 made by defendant no.2 for amending written statement subject to payment of costs of Rs.4000/- to be paid to the plaintiffs.

4. It is not in dispute that the plaintiffs have instituted suit in the year 1994. Defendants no. 1 and 3 filed written statement. Defendant no.2 filed written statement in 2002 adopting the written statement of defendants no. 1 and 3. On 1.9.2006, the plaintiffs amended the plaint. On 29.7.2011, defendant no.2 filed written statement. The plaintiffs carried out second amendment on 6.7.2013. It appears that on 11.2.2014, the order was passed by the learned trial Judge to proceed further in the suit in the absence of additional written statement of defendant no.2. On 6.1.2015, the plaintiffs carried out third amendment in the plaint. Defendant no.2 filed additional written statement in July 2015 at Exhibit-57. Plaintiffs took out application Exh.59 for striking out paragraphs 8 to 24 of the additional written statement of defendant no.2 filed in July 2015. By order dated 23.9.2015, the learned trial Judge partly allowed that application and directed

defendant no.2 to strike out paragraphs 8 to 24 of his additional written statement filed at Exh.57.

5. It is common ground between the parties that against order dated 23.9.2015, below Exhibit 59, defendant no.2 has filed Revision Application and the same is pending in the Small Causes Court.

6. In view thereof, learned counsel appearing for the parties submit that the impugned order may be set aside and Revision Application No.63 of 2016 preferred by defendant no.2 may be heard along with the Revision Application preferred by defendant no.2 against order dated 23.9.2015 below Exhibit 59 and other Revision Applications. In view thereof, by consent of the parties petition is disposed of in following terms.

(i) Impugned order dated 13.6.2016 passed by the Appellate Court in Revision Application No. 63 of 2016 is set aside. Revision Application No.63 of 2016 is restored to the file of the Appellate Court. Appellate Court shall club Revision Applications no. 35 of 2015 and 122 of 2015 together and decide the same together. Appellate Court is requested to dispose of all the Revision Applications within four weeks from 20.8.2016. All contentions of the parties on merits are expressly kept open.

(ii) Rule is made absolute in the aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)