

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 593 OF 2015

SMT. SMRUTI HARISHCHANDRA BHAT	...Petitioner
<i>Versus</i>	
FORESIGHT HOLDINGS PVT. LTD.	...Respondent

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Ms. Manjiri S. Parasnis, Advocate for the Petitioner.
Mr. A.Y. Sakhare, Senior Counsel i/b. V.S. Talkute, Advocate for
the Respondent.

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CORAM : R. G. KETKAR, J.

DATE : 10th MARCH, 2016

P.C.

1. Heard Ms.Manjiri Parasnis, learned Counsel for the applicant and Mr. A.Y. Sakhare, learned Senior Counsel for the respondent, at length.

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

3. By this application under Section 115 of Code of Civil Procedure, 1908 (for short, 'CPC') the applicant has challenged

the judgment and decree dated 10.4.2015 passed by learned Joint Civil Judge, Senior Division at Satara in Special Civil Suit No.298/2009. By that order, learned trial Judge decreed the suit instituted by the respondent, hereinafter referred to as the plaintiff under Section 6 of the Specific Relief Act, 1963 (for short, 'Act') and directed the applicant, hereinafter referred to as the 'defendant', to hand over possession of flat Nos.103 and 104 situate on the ground floor and flat Nos.203 and 204 situate on the first floor in Osho Apartment situate in final plot No.125 to 128/D in Pachgani Town Planning Scheme No.3, Kasbe Pachgani, Taluka – Mahabaleshwar, District – Satara (for short, 'suit premises'), within 90 days from the date of the order failing which the plaintiff would be at liberty to take possession through the Court.

4. It is not necessary to deal with various submissions advanced by Ms. Parasnis. Suffice it to consider one of the submissions advanced on behalf of the defendant and that is - in the plaint the plaintiffs have specifically asserted that the defendant dispossessed Siraj Govani, who is given special power of attorney dated 23.2.2005 by the plaintiff company, on

19.6.2009. In the suit it is further contended that in view of the dispute between the defendant and said Siraj Govani, the plaintiff company revoked the power of attorney on 21.8.2009. The power of attorney holder handed over possession of the suit premises to the plaintiff company and on 21.8.2009. She, therefore, submitted that on one hand the plaintiff asserted that its representative, namely, the power of attorney Shri Siraj Gowani was dispossessed on 19.6.2009 by the defendant and on the other it is contended that after revoking the power of attorney on 21.8.2009, said Siraj Gowani handed over possession to the plaintiffs. She invited my attention to paragraphs-3, 4, 5 and 6 of the plaint as also evidence of Shri Salim Pyarali Gowani Exhibit-18 and in particular paragraph-6 wherein it is deposed as under :

“Registered notice was also issued to that effect to Mr. Siraj Pyarali Gowani on 21/8/2009. As Mr. Siraj Pyarali Gowani was in possession of said flats as a Power of Attorney holder after cancellation of said Power of Attorney he has handed over possession of suit flats in favour of the plaintiff company.”

5. In short, she submitted that the plaintiff having obtained possession on 21.8.2009 has not pleaded that

thereafter it was dispossessed by the defendant. She submitted that said aspect is not considered by the learned trial Judge.

6. In view thereof, Mr. Sakhare upon taking instruction from Shri Salim Pyarali Govani, Director of the respondent/plaintiff who is present in the Court states that by consent of the parties the impugned order may be set aside and the learned trial Judge may be directed to dispose of the suit in a time bound manner.

7. In view thereof, by consent of the parties, the impugned order is quashed and set aside and Special Civil Suit No.298/2009 is restored to the file of the trial Court.

8. Parties agree that they will appear before the trial Court on 28.3.2016 and for that purpose no fresh notice be issued to them. Learned trial Judge is requested to decide the suit within three months from the date of appearance of the parties on the basis of the material already on record and in accordance with law. All contentions of the parties are expressly kept open. Learned trial Judge will deal with the contentions of the defendant recorded herein and all other contentions that

are available to the parties. During the pendency of the suit, the defendant shall maintain status quo in respect of the suit premises as ordered on 16.10.2015 by this Court. Rule is made absolute in aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)