

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 873 OF 2014

Mr. Sharad Chande

And Anr

...Applicants

Versus

Smt. Rashmi Bharat Mehta

...Respondent

....

Mr.G.S. Godbole, Senior Advocate a/w. Siddhartha R. Ronghe,
Advocate for the Applicants.

Mr. Manoj P. Mhatre, Advocate for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 26th July, 2016

P.C.

1. Heard Mr. G.S. Godbole, learned Senior Counsel for the applicants and Mr. Manoj Mhatre, learned Counsel for the respondent, at length. By consent of parties, application is taken up for admission.

2. Rule. Mr. Mhatre 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 applicants have challenged the judgment and decree dated 5.4.2014 passed by the Appellate Bench of the Court of Small Causes at Bandra, Mumbai in R.A.D. Appeal No.2 of 2013. By that order, the Appellate Court allowed the appeal preferred by the respondent/plaintiff and quashed and set aside the judgment and decree dated 1.2.2013 passed by the learned Judge, presiding over Court Room No.38 of the Court of Small Causes at Mumbai in R.A.D. Suit No.390/2008. The Appellate Court decreed the suit instituted by the respondent and declared her as lawful tenant in respect of the suit premises. The Appellate Court issued injunction restraining the applicants/defendants from dispossessing the plaintiff from the suit premises without taking recourse to law.

4. Mr. Godbole invited my attention to prayer clause (b-1) and submitted that the order of the appellate Court as also that of the trial Court may be set aside and R.A.D. Suit No.390/2008 may be clubbed to L.E. & C. Suit No.40/56 of 2009 and be assigned to the same Court. He submitted that applicant No.2 herein may be made party in both the suits and common

evidence may be recorded in both the suits as the parties are one and the same.

5. Mr. Mhatre states that the respondent is present in Court. He has tendered photocopy of Aadhaar Card of the respondent, which is taken on record and marked 'X' for identification. Upon taking instructions from her, he states that the respondent has no objection for setting aside the appellate Court's order as also trial Court's order. He further states that after clubbing the suits together the parties may be permitted to lead common evidence in both the suits. In view thereof, by consent of the parties, Civil Revision Application is disposed of in following terms :

- [i] Judgment and decree dated 1.2.2013 passed by the learned Judge, presiding over Court Room No.38 of the Court of Small Causes at Mumbai in R.A.D. Suit No.390/2008 as also judgment and decree dated 5.4.2014 passed by the Appellate Bench of the Court of Small Causes at Bandra, Mumbai in R.A.D. Appeal No.2 of 2013 are quashed and set aside. However, the interim order which was operating pending the suit shall remain in operation during

pendency of the suit;

- [ii] R.A.D. Suit No.390/2008 and L.E. & C. Suit No.40/56 of 2009 shall be clubbed together. The learned Chief Judge of Small Causes Court will assign the suits to one Court. Parties shall appear before the learned Chief Judge on 1.8.2016 along with authenticated copy of this order.
- [iii] Parties are permitted to lead common evidence in both the suits after they are clubbed together;
- [iv] Applicant No.2 shall be impleaded as defendant in R.A.D. Suit No.390/2008 and as plaintiff in L.E. & C. Suit No.40/56 of 2009. Said amendment shall be carried out within two weeks from production of the authenticated copy of this order.
- [v] Rule is made absolute in aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)