

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8496 OF 2016

Dhirubhai Babubhai Patel and others ... Petitioners
Vs.
Jivraj Punamchand Patel and others ... Respondents

Mr. Rakesh Agrawal for Petitioners.

CORAM : R. G. KETKAR, J.
DATE : AUGUST 19, 2016

P.C. :

Heard Mr. Agrawal, learned Counsel for petitioners at length.

2. By this Petition under Article 227 of the Constitution of India, petitioners, hereinafter referred to as 'defendants No.4 to 6', have challenged the judgment and order dated 23.03.2016 passed by the learned Judge, presiding over Court Room No.25 of the Court of Small Causes at Mumbai below exhibit-41 in R.A.D. Suit No.366 of 2013. By that order, the learned trial Judge rejected the Purshis at exhibit-41 filed by defendants No.4 to 6 for treating reply dated 25.10.2013 filed by them to the injunction application as written statement of defendants No.4 to 6.

3. Respondent No.1, hereinafter referred to as 'plaintiff', has instituted Suit for declaration of his tenancy rights. After defendants No.4 to 6 were impleaded by the plaintiff, suit summons was served on them on 03.10.2013. Defendants No.4 to 6 filed reply to the injunction notice at exhibit-11 taken out by the plaintiff on 25.10.2013. On the same day, the learned trial Judge disposed of the application exhibit-11.

4. Mr. Agrawal submitted that during the course of hearing of notice of injunction on behalf of defendants No.4 to 6, request was made for treating the reply filed on 25.10.2013 as written statement of defendants

No.4 to 6. However, the same was neither recorded in the order dated 25.10.2013 below exhibit-11 as also in the Rojnama. On 10.06.2013, preliminary issue framed under Section 9-A of C.P.C. was decided against defendants No.4 to 6. The learned trial Judge made inquiries about the written statement of defendants No.4 to 6. At that time, defendants No.4 to 6 came to know that their statement to treat reply to injunction application as written statement was not recorded. Defendants No.4 to 6, therefore, filed Purshis at exhibit-41 to treat reply to application for injunction as the written statement. By the impugned order, the learned trial Judge has rejected the Purshis.

5. Mr. Agrawal has invited my attention to paragraphs 2 and 4 of the impugned order and submitted that in these paragraphs, the learned trial Judge has wrongly recorded that the reply to injunction notice was filed on 30.06.2015. This is factually incorrect. Reply to injunction application was filed on 25.10.2013. I find merit in this submission.

6. I have perused the impugned order as also the order dated 25.10.2013 passed by the learned trial Judge below exhibit-11. Perusal of the impugned order as also the order dated 25.10.2013 does not indicate that the learned trial Judge recorded request made on behalf of the defendants No.4 to 6 for treating reply to injunction application as written statement. Perusal of Purshis also does not indicate that the said fact was set out in the Purshis. In view thereof, it will be open to the defendants No.4 to 6 to consider filing appropriate application placing these facts on record. Subject to this, Petition fails and the same is dismissed. Order accordingly. If such application is filed, the same shall be considered on its own merits and in accordance with law, uninfluenced by the observations made herein.

(R. G. KETKAR, J.)