

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6962 OF 2014**

1. Ateeq Anwar Agboatwala and ..Petitioners.
Ors.

Vs

1. Heirs and L.Rs of Rajabally .. Respondents
Yusufally and Anr.

Mr. P.K.Dhakephalkar, Senior Advocate, i/b Jaydeep Rao, Advocate
for Petitioners.

Mr. Deepak Lulia, Advocate for Respondent no.2.

CORAM : R.G.KETKAR,J.

DATE : 21/07/2016

PC:

1. Heard Mr. P.K.Dhakephalkar, learned senior counsel for the petitioners and Mr. Deepak Lulia, learned counsel for respondent no.2 at length. Rule. Mr. Lulia waives service for respondent no.2. At the request and by consent of the parties, Rule is made returnable forthwith and petition is taken up for final hearing.

2. 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 26.3.2013 passed by the learned Judge, presiding over Court Room No.9, of the Small Causes Court at Bombay in MARJI No.698 of 2012 in R.A.E.Suit No. 287/476 of 2011 as also the Judgment and order dated 5.5.2014 passed by the Appellate Bench of the Court of Small Causes in Appeal No.108 of 2013 in R.A.E.Suit No.287/476 of 2011. By these orders, the Courts below allowed the application

filed by the defendants under Order IX, Rule 13 of C.P.C. for setting side exparte decree dated 3.4.2012. The Courts below allowed the application on the ground that suit summons was not served on the defendants.

3. The matter was heard at length and was kept back in the afternoon session so as to enable Mr. Dhakephalkar to obtain instructions from the petitioners on following point:

Whether the petitioners are ready and willing to hand over possession of the suit premises to defendant no.2 as agent of Court Receiver subject to defendant no.2 filing undertaking within one week from today in this Court to the effect that defendant no.2 will himself carry on business in the suit premises.

4. Upon taking instructions, Mr. Dhakephalkar submits that the petitioners will not press this petition and are agreeable for appointment of court receiver in respect of the suit premises as also appointment of defendant no.2 as agent of court receiver. He further states that having regard to the fact that the petitioners have instituted suit on the ground of non user as also bonafide requirement, the trial Court may be directed to dispose of suit in time bound manner.

5. Mr. Lulia has no objection for adopting this course and he assures that defendant no.2 will extend full cooperation for early disposal of the suit.

6. In view thereof, by consent of the parties, following order is

passed and impugned orders are modified as under:

(i) Receiver High Court Bombay is appointed in respect of the suit premises with all powers under Order 40 of C.P.C. Defendant no.2 is appointed as agent of the Court Receiver without payment of royalty and security but subject to regular paying rent and other statutory dues.

(ii) Petitioners will hand over possession of the suit premises to the Court Receiver within two weeks from today. Receiver in turn will hand over possession of the suit premises to defendant no.2 immediately subject to defendant no.2 filing undertaking in this Court within one week from today with advance copy to the other side incorporating therein that defendant no.2 will himself carry on business in the suit premises.

(iii) Learned trial Judge is requested to dispose of suit within one year from production of the authenticated copy of this order. Parties assured that they will extend full cooperation for early disposal of the suit.

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

(v) List the Petition for reporting compliance after three weeks.

(R.G.KETKAR, J.)