

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition No. 9055 OF 2015

Smt. Lilavanti Gokaldas Morjaria
and Ors.

...Petitioners

Versus

IndusInd Media And Communications
Ltd. and Anr.

...Respondents

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Mr.Jitendrakumar G. Damani, Advocate for the Petitioners.

Mr. Batuk G. Morjaria, petitioner No.2, present in person.

Ms. Vandana Jaisingh a/w. Ms. Archana Jaisingh, Advocate for
Respondent No.1.

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CORAM : R. G. KETKAR, J.

DATE : 01st OCTOBER, 2016

P.C.

1. Heard Mr. Jitendrakumar Damani, learned Counsel for the petitioners and Ms.Vandana Jaisingh, learned Counsel for respondent No.1, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as the 'plaintiffs', have challenged the judgment and order dated 5.1.2015 passed by the Appellate Bench of Small Causes Court at Bandra, Mumbai in Revision Application No.1/2014. By that order, Appellate Court allowed Revision Application filed by the first respondent against the judgment and order dated 6.9.2013 passed by learned Judge, presiding over Court Room No.37 of Court of Small Causes at Mumbai below Exhibit-9 in L.E. & C. Suit No.99/129 of 2011.

3. Mr. Damani submitted that the impugned order records that he was present at the time of hearing of Revision Application. In paragraph-5, Appellate Court framed the points for determination after considering the submissions of both the parties. He submitted that, however, said finding is factually incorrect and contrary to record. He was not heard by Appellate Court while deciding Revision Application. He has invited my attention to paragraph-15 of the Petition, wherein the petitioners have asserted that initially when appeared in the year 2014, it was decided to be withdrawn. Mr. Damani submitted that the parties were negotiating and, therefore, it was agreed between the parties to withdraw Revision Application. It is further averred that the revision was allowed without hearing of the petitioners. He submitted that as the Appellate Court has wrongly recorded that the petitioners were heard, he will take out Review Petition within three weeks from today on the ground that the petitioners were not heard while deciding Revision. He submitted that if such Review Petition is filed within three weeks, Appellate Court may be directed to decide Review Petition on its own merits and said Review Petition should not be dismissed on the ground that it is filed beyond period of limitation.

4. Ms.Jaisingh submitted that the contention advanced on behalf of the petitioners that they were not heard is not correct. The petitioners were heard by the

Appellate Court. She, however, submits that in case the Court is inclined to grant liberty, respondent No.1 will file reply opposing said Review Petition and all contentions in that regard may be kept open.

5. Mr. Damani submits that petitioner No.2 is present in Court. He has tendered photocopy of Aadhaar Card of petitioner No.1, which is taken on record and marked 'X' for identification. Upon taking instructions from petitioner No.2, Mr.Damani seeks permission to withdraw this Petition with liberty to file Review Petition. He assures that within three weeks from today, the petitioners will file Review Petition and serve copy in advance on the other side. In view thereof, petition is allowed to be withdrawn with liberty as prayed. The petitioner shall file Review Petition within three weeks from today. If Review Petition is filed within three weeks from today, Appellate Court shall decide the same on its own merits and shall not dismiss the same on the ground of limitation. In other words, Appellate Court shall treat the Review Petition within time. Respondent No.1 shall file reply within two weeks from service of Review Petition. Appellate Court is requested to decide Review Petition within eight weeks from today. All contentions of the parties on merits are expressly kept open. Order accordingly.

(R. G. KETKAR, J.)