

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10662 OF 2016

Harshad Kevalchand Vora and
Ors

Petitioners

Vs

Ashokkumar Dhanrajji Kothari

.. Respondent

Mr. Suneel Mogre a/w Ms Puja Tukrel i/b Raj Baid, Advocate for
Petitioners.

Mr. Joel D'Souza i/b R.M.Vanoo, Advocate for Respondent.

CORAM : R.G.KETKAR,J.

DATE : 16/09/2016

PC:

1. Not on Board. At the request of Mr. Mogre, taken up for admission. Heard Mr.Suneel Mogre, learned counsel for the petitioners and Mr. Joel D'Souza, learned counsel for the respondent at length. Rule. Mr. D'Souza waives service for the respondent. 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 have challenged clause 3 of operative part of the judgment and order dated 1.8.2016 passed by the Appellate Bench of the Small Causes Court at Bombay below Exhibit 23 in (A-1) Appeal No.78 of 2015 in R.A.E.& R. Suit No.1030/1789 of 2001. By that order, the Appellate Court partly

allowed the application Exhibit 23 made by the respondents, hereinafter referred to as 'defendants', and directed the petitioner to repair the ceiling of kitchen within three months. The petitioners are further directed to restore forthwith the water supply to the tenanted premises which was existing on the date of filing of the suit and return confiscated dustbin and ladder to the appellant.

3. Mr. Mogre has invited my attention to paragraph 15 of the petition wherein the petitioners have asserted as under:-

“15. Without admitting that the portion of the plaster of the ceiling in the kitchen had fallen due to any fault on the part of the petitioners, the petitioners are not challenging the said first part of the order, viz. to repair the ceiling of the kitchen.”

During the course of hearing, Mr. Mogre reiterated that statement and submitted that the petitioners are not challenging clause 2 of operative part of the impugned order and assures that as per that clause, the petitioners will carry out repair the ceiling of kitchen within three months from the date of the order. Assurance given by Mr Mogre is recorded.

4. The petitioners have principally challenged clause 3 of operative part of the order. He has invited my attention to paragraphs 11 and 12 of the impugned order and submitted that no reasons are given by the appellate court for granting relief in

terms of clause 3 of the operative part of the order. He submitted that in fact in paragraph 12, the appellate court observed thus:

“12. Therefore, in view of the said statement, directions need to be given to restore the ladder and dustbin to the appellant, **if confiscated by the respondents/landlords**. Therefore, the said directions need to be given in the circumstances.”

(emphasis supplied)

Clause 3 of the operative part of the order reads thus:

“3. The respondent is further directed to restore forthwith the water supply to the tenanted premises which was existing on the date of filing of the suit and return confiscated dustbin and ladder to appellant.”

5. Mr. D'sourza does not seriously dispute this position and submits that by consent, clause 3 of the impugned order may be set aside.

6. Learned counsel appearing for the parties agree that they will appear before the appellate court on 04.10.2016 and for that purpose, no fresh notice be issued to them. They further submit that the appellate court may be directed to dispose of prayer clauses (b) and (c) of the application Exhibit 23 in a time bound manner.

7. In view thereof, by consent of the parties, petition is disposed of in the following terms:

(i) Clause 3 of operative part of the impugned order is set aside and the matter is remitted to the appellate court for consideration of prayer clauses (b) and (c) of the application -Exhibit 23 only. Rest of the order is maintained.

(ii) Parties agree that they will appear before the appellate Court on 4.10.2016 and for that purpose, no notice be issued to them. The Appellate Court is requested to dispose of the application-Exhibit 23 within two weeks from 4.10.2016 . All contentions in that regard are expressly kept open.

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

(R.G.KETKAR, J.)