

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11644 OF 2016

Harshad Kevalchand Vora and others ... Petitioners
Vs.
Ashokkumar Dhanrajji Kothari ... Respondent

Mr. P. S. Dani, Senior Advocate a/w. Mr. Raj Baid and Ms Puja T. for
Petitioners.

Mr. Joel D'souza a/w. Mr. S. M. Kamble for Respondent.

CORAM : R. G. KETKAR, J.
DATE : OCTOBER 14, 2016

P.C. :

Heard Mr. Dani, learned Senior Counsel for petitioners and
Mr. D'souza, learned Counsel for respondent at length. Rule.
Mr. D'souza waives service for respondent. At the request and by
consent of the parties, Rule is made returnable forthwith and the Petition
is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India,
petitioners, hereinafter referred to as 'plaintiffs', have challenged the
judgment and order dated 01.08.2016 passed by the Appellate Bench of
the Small Causes Court below exhibit-12 in (A-1) Appeal No.78 of
2015. By that order, the Appellate Court allowed the application
exhibit-12 made by the respondent, hereinafter referred to as 'defendant',
under Order 41, Rule 27 of the Code of Civil Procedure, 1908 (for short
'C.P.C.').

3. Mr. Dani has invited my attention to the application exhibit-12
made by the defendant. He relied upon the decision of the Apex Court in
the case of *Union of India Vs. Ibrahim Uddin*, (2012) 8 SCC 148. He
submitted that defendant has not made out any case covered by Order

41, Rule 27 of C.P.C.

4. During the course of hearing, I suggested to Mr. D'souza that the application exhibit-12 does not make out any ground under Order 41, Rule 27 of C.P.C., and therefore, impugned order requires to be set aside.

5. After arguing the Petition for quite some time, Mr. D'souza submits that the impugned order may be set aside reserving liberty to the defendant to file fresh application under Order 41, Rule 27 giving all the requisite details contemplated by that provision. Mr. Dani submits that in that event, all the contentions of the plaintiffs including the maintainability of such application may be kept open.

6. In view thereof, impugned order is set aside reserving liberty to the defendant to file fresh application under Order 41, Rule 27 of C.P.C. for adducing additional evidence. All contentions of the plaintiffs, including maintainability of such application, are kept open. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)

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