

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

WRIT PETITION NO.10964 OF 2015

Dnyaneshwar Nikam and anr. : Petitioners.
Versus
Kothari Brothers and ors. : Respondents.

Mr. Suryakant K Pise for the Petitioners.

CORAM : R. M. SAVANT, J.
DATE : 07th January 2016

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 28/07/2015 passed by the learned Judge of the Small Causes Court Mumbai allowing the Application (Exhibit 58) as also the order dated 04/09/2015 passed by the Appellate Bench of the Small Causes Court rejecting the Revision Application on the ground of its maintainability.

2 By the said Application (Exhibit 58) the Defendant No.1 has applied for amendment of the written statement so as to make a reference to a registered declaration of the year 1985. It was the case of the Defendant No.1 that though the Plaintiffs were called upon to give information in respect of the said declaration the said information was not forthcoming from the Plaintiffs and therefore there was a delay in filing the Application.

3 The Trial Court considered the said Application and has by the first

impugned order dated 28/07/2015 allowed the same. The gist of the reasoning of the Trial Court was that the delay has occurred on account of the Plaintiffs not providing information. The Trial Court observed that though the contentions were sought to be raised as regards the efficacy of the declaration it was not necessary for the Trial Court to consider the merits of the matter at the hearing of the Application for amendment. The Trial Court also observed that the due diligence test has been satisfied by the Defendant No.1 in view of the fact that the Plaintiffs have not placed any material on record to show that the Defendant No.1 was having knowledge of declaration.

4 The order passed by the Trial Court was taken exception to by way of a Revision being Revision Application No.254 of 2015 by the Plaintiffs. Having regard to the judgment of the Full Bench of this Court in the matter of *Bhartiben Shah & Anr. v/s. Cracy Thomas & ors* reported in *2013(2) Bom. C.R. 1*, the Appellate Bench of the Small Causes Court dismissed the said Revision Application on the ground that the same was not maintainable.

5 In my view, having regard to the reasons mentioned by the learned Judge of the Small Causes Court for allowing the Application, no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]