

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.637 OF 2015
WITH
CIVIL REVISION APPLICATION NO.638 OF 2015

SHRI. VINAYAK KAMLAKAR KUVALEKAR
AND ANR

...APPLICANTS

Versus

ZAVERBEN DAHYALAL SAVLA
AND ORS

...RESPONDENTS

....

Mr. G.S. Godbole, Senior Counsel a/w. Mr. Drupad Patil i/b. Akshay Petkar, for the Applicants.

Mr. Rahul Narichania, Senior Advocate a/w. Mr. Rakesh Agrawal, for the Respondents.

....

CORAM : R. G. KETKAR, J.

DATE : 25th JANUARY, 2016

P.C.

1. Heard Mr. G.S. Godbole, learned Senior Counsel for the applicants and Mr. Rahul Narichania, learned Senior Counsel for the respondents, at length.
2. Rule. Mr. Rakesh Agrawal, waives service on behalf of the respondents. At the request and by consent of the parties, Rule is made returnable forthwith and the applications are taken up for final hearing.
3. Civil Revision Application No.637 of 2015 is preferred by the applicants in MARJI application No.647/2012. They

have challenged the judgment and order dated 30.9.2015 passed by the Appellate Court Bench of Small Causes Court, Mumbai in Misc. Appeal No.30 of 2014 as also the judgment and order dated 7.12.2013 passed by learned Judge, presiding over Court No.16 of Small Causes Court, Mumbai in MARJI application No.647 of 2012 filed in RAE Suit No.2622 of 1964.

4. Civil Revision Application No.638 of 2015 is filed by the applicants in MARJI application No.647/2012 . They have challenged the judgment and order dated 30.9.2015 passed by the Appellate Court Bench of Small Causes Court, Mumbai in Revision Application No.199 of 2015. They have also challenged judgment and order dated 7.12.2013 passed by learned Judge, presiding over Court No.16 of Small Causes Court, Mumbai in MARJI application No.647 of 2012 filed in RAE Suit No.2622 of 1964.
5. By order dated 7.12.2013, the application made by the respondents for seeking following reliefs *(1) the applicants may be permitted to execute the decree of RAE Suit No.2622 of 1964 against the respondent Nos.1 and 2, (2)*

the respondent Nos.1 and 2 be directed to give mesne profits of the suit premises from the date of decree till the possession of the suit premises is delivered to the applicants, was allowed by learned trial Judge. Learned trial Judge held that the respondents herein are entitled to execute judgment and decree dated 14.8.1968 passed in RAE Suit No.2622 of 1964; and that they are entitled to future mesne profits from the date of decree till the possession is delivered by the applicants herein to the respondents. Learned trial Judge further ordered holding of enquiry as per Order 20 Rule 12(1)(c) of CPC.

6. Aggrieved by clause (3) of the operative part of the said order dated 7.12.2013, the applicants preferred Misc. Appeal No.30 of 2014. By order dated 30.9.2015, the Appellate Bench of Small Causes Court at Mumbai dismissed Misc. Appeal mainly on the ground that it is not maintainable.
7. The applicants preferred Revision Application No.199 of 2015 aggrieved by clause (2) of the operative part of the order dated 7.12.2013. By order dated 30.9.2015, the

Appellate Bench of Small Causes Court at Mumbai rejected the Revision Application. Against that decision, the applicants have instituted Civil Revision Application No.638 of 2015.

8. I have heard learned Counsel for the parties at length. After arguing the applications for quite sometime, Mr.Narichania, upon taking instructions from Mr.Bipin Savla, respondent No.2 herein, submits that by consent of the parties, the order dated 7.12.2013 passed by learned trial Judge may be set aside and the MARJI Application No.647 of 2012 may be restored to the file of trial Court for deciding it afresh. He further submits that learned trial Judge may be directed to dispose of the application as early as possible and preferably within three months from the date of appearance of the parties. He further submits that the applicants herein may be directed to pay compensation as admittedly they are occupying suit premises.

9. Mr. Godbole, has no objection for directing trial Court to dispose of MARJI application in a time bound manner. He assures that they will extend full cooperation for timely disposal of MARJI application. Mr. Godbole, submits that

the respondents herein may be permitted to file application claiming compensation and learned trial Judge may be directed to dispose of said application keeping all contentions of the parties open.

10. In view thereof, by consent of the parties, Civil Revision Applications are disposed of in the following terms :

- [i] The order dated 7.12.2013 passed by learned trial Judge in MARJI application No.647 of 2012 is quashed and set aside. MARJI application No.647/2012 is restored the file of the trial Court.
- [ii] The respondents shall make an application along with an authenticated copy of this order for taking up MARJI application for hearing, after giving advance notice to the other side.
- [iii] Learned trial Judge is requested to decide MARJI application within three months from the date of application made by the respondents herein. All contentions of the parties on merits are expressly kept open.
- [iv] In view of setting aside order dated 7.12.2013, the orders

dated 30.9.2015 passed in Revision Application No.199 of 2015 and Misc. Appeal No.30 of 2014 stand dissolved.

- [v] The respondents are at liberty to make an application for direction to the applicants herein for payment of compensation. If such an application is made, learned trial Judge is requested to decide said application within six weeks from the date of filing of said application. All contentions of the parties in that regard are expressly kept open.
- [vi] All contentions of the parties on the pending proceedings are expressly kept open.
- [vii] Rule is made absolute in the aforesaid terms with no order as to costs.
- [viii] Parties to act on an authenticated copy of this order.

(R. G. KETKAR, J.)

Deshmane (PS)