

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

WRIT PETITION NO.713 OF 2016

**All heirs & legal representatives of
A.H.Gadiyawala (deleted)**

1A Sangeeta R Devrukhar and ors.

: Petitioners.

Versus

Saifuddin Ebrahim Golwala and anr.

: Respondents.

Mr. D A Nalavade i/by Ms. Sunita R Tiwari for the Petitioners.

Mr. Sheroo Kanuga for the Respondent No.2.

CORAM : R. M. SAVANT, J.

DATE : 08th February 2016

P.C.

1 The order dated 06/05/2015 passed by the Appellate Bench of the Small Causes Court, Mumbai partly allowing the Application (Exhibit 26) filed by the Petitioners is taken exception to by way of the above Writ Petition.

2 By the said Application (Exhibit 26) the Petitioners, who are the original Appellants in Appeal No.53 of 2013 pending before the Appellate Bench of the Small Causes Court, had sought restoration of the possession of the suit premises being Room No.1, Khatija Manor, Ground floor, House No.4, Khambatta Lane, Byculla, Mumbai 400 027. It seems that the Appellate Bench of the Small Causes Court had granted stay of the decree by order dated 14/02/2014 inter-alia on certain conditions which were revolving around the deposit of arrears of rent and the payment of the amount of Rs.9000/- p.m.

post the decree. It seems that the said condition was not complied with by the Petitioners resulting in the Respondents/landlords obtaining the possession in the execution proceedings filed by them on account of the non-compliance of the said order dated 14/02/2014. The possession of the premises has been taken on 10/02/2015 and it is almost a year which has elapsed since then. It seems that the amount which was directed to be deposited by the Appellate Bench of the Small Causes Court vide order dated 14/02/2014 has been deposited by the Petitioners so is claimed by the learned counsel appearing for the Petitioners. It seems that the Appeal is coming up for hearing before the Appellate Bench of the Small Causes Court tomorrow and considering the fact that the possession has been obtained almost a year back and also considering the fact that by clause 2 of the operative part of the impugned order, the Respondents herein are restrained from dealing with the suit premises, in my view, the interest of justice would be served if the following directions are issued :-

- A] Since the Petitioners are desirous of amending the Memo of Appeal in question so as to incorporate some further grounds, the Appellate Bench of the Small Causes Court would allow them to amend the Memo of Appeal within two weeks from date i.e. on or before 22/02/2016. The copy of the proposed amendment to be served on the other side.

- B] The Appeal in question being No.53 of 2013 to be taken up for hearing after 22/02/2016 as per the convenience of the Appellate Bench of the Small Causes Court, however, to be decided latest by 31/03/2016.
- C] Since this Court has not interfered with the order passed by the Appellate Bench of the Small Causes Court, save and except to the extent above, the clause 2 of the operative part of the impugned order would continue to operate.
- D] The Appellate Bench of the Small Causes Court would pass appropriate orders in respect of the deposit made by the Petitioners at the hearing of the Appeal in question.
- E] Needless to state that the Appeal in question would be decided on its own merits and in accordance with law. The contentions of the parties are explicitly kept open for being urged before the Appellate Bench of the Small Causes Court. It would be contingent upon the decision in the Appeal that the question of restoration of possession would arise.

F] With the aforesaid directions, the above Writ Petition is disposed of.

[R.M.SAVANT, J]