

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11490 OF 2015**

Antoinetter Gomes and Ors	Vs	..Petitioners.
M/s J.M.Constructions		.. Respondents

Mr. Y.S.Jahagirdar, Senior Advocate i/b Ms. Ranjana Parikh,
Advocate for Petitioners.

Mr. Charles J. De Souza , Advocate for Respondents.

**CORAM : R.G.KETKAR,J.
DATE : 12/08/2016**

PC:

1. Heard Mr. Y.S. Jahagirdar, learned senior counsel for the petitioners and Mr. Charles De Souza, learned counsel for the respondents at length. Rule. Mr. De Souza waives service on behalf of the respondents. 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, hereinafter referred to as 'defendants', have challenged the Judgment and order dated 24.3.2015 passed by the learned trial Judge below Exhibit 318 in R.A.E. Suit No. 710/1152 of 2005 as also the judgment and order dated 24.8.2015 passed by the Appellate Bench of the Small Causes Court at Mumbai in Revision Application No. 135 of 2015. By

these orders, the Courts below rejected the application Exhibit-318 made by the defendants for recalling PW 1 Jitendra Mehta for further cross examination.

3. After arguing the petition for quite some time, Mr. De'Souza submits that the impugned orders may be set aside to the extent of application below Exhibit 318 for deciding the same afresh uninfluenced by the observations made in this order.

4. In view thereof, by consent of the parties, order dated 24.3.2015 below Exhibit 318 as also the order dated 24.8.2015 in Revision Application No. 135 of 2015 are set aside. Application Exh.318 is restored to the file of the trial Court. Learned trial Judge is requested to decide the said application as expeditiously as possible uninfluenced by the observations made herein. All contentions of the parties on merits are expressly kept open.

5. Rule is made absolute in the aforesaid terms, with no order as to costs.

(R.G.KETKAR, J.)