

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

CIVIL WRIT PETITION NO. 11581 OF 2015

Seth Industries Pvt. Ltd.	...Petitioner
Vs.	
Mrs. Veena Seth	...Respondent

Ms. Dipti Panda a/w. Mr. Kunal Parekh
i/b. Ms. Thakore Jariwala & Associates for the Petitioner
Mr. Farhan Dubhash i/b. Mr. B.A. Puneekar for the Respondent

**CORAM : R.M.SAVANT, J.
DATED : 18TH FEBRUARY, 2016**

PC. :

1. The writ jurisdiction of this Court is invoked against the order dated 9th October, 2013 passed by the learned Single Judge of the Court of Small Causes and the order dated 7th August, 2015 passed by the Appellate Bench of the Small Causes Court. The said order dated 9th October 2013 is passed in Review Application No.7 of 2012, which Application was filed by the Respondent herein ie., the original Plaintiff, for review of the order dated 22nd February, 2012 passed in Misc. Application No. 331 of 2010. The order dated 7th August, 2015 is passed in Misc. Appeal No.89 of 2013 filed by the Petitioner. The Suit in question being RAD Suit No.217/476 of 2000 was filed by one Naresh Seth against the

Petitioner and one Shiv Prakash Seth claiming a declaration of tenancy in respect of the premises being 2nd Floor, Simplex House, Plot No.44, Jai-hind Co-op. Housing Society, JVPD Scheme, Ltd., Mumbai 400 049.

2. In the said suit the Petitioner made an application being Interim Notice No.1683 of 2000 before the learned Judge of the Small Causes Court who was seized with the suit for stay of further proceedings in the suit since the arbitration proceedings were pending between the parties. The said Application came to be allowed by the learned Judge of the Small Causes Court and further proceedings in the said RAD Suit No.217/476 of 2000 came to be stayed till the decision of the arbitration proceedings.
3. The original Plaintiff Naresh Seth died on 22nd June 2007. On 19th September 2007 an application **Exhibit-7** came to be filed by the Respondent herein, who is the wife of the said Naresh Seth for permission to bring herself on record as a Plaintiff in place of the deceased Naresh Seth being his heir. It seems that the said application was allowed on the same day and permission was granted to her to amend the plaint accordingly. It seems that prior

thereto an Award came to be passed on 1st December, 2006 in the arbitration proceeding. The suit was adjourned for recording the fact of the plaint being amended and was kept on 6th October 2007 for the said purpose. On the said day the Plaintiff ie. the Respondent herein paid the costs. However, it seems that the copies of the amended plaint were not supplied to the Registry for being served on the Defendants. Hence, on 5th March, 2010 the Suit was adjourned to 29th March, 2010 to facilitate the completion of the said formalities. However, on 29th March, 2010 both the Plaintiff and her Advocate were absent, the Suit accordingly came to be dismissed by the Trial Court on the said day on account of non-compliance.

4. The Respondent herein thereafter filed Misc. Application No. 331 of 2010 on 1st October, 2010 for setting aside of the said dismissal and for restoration of the Suit. The learned Judge of the Small Causes Court Shri D.B. Gadale rejected the said application on the ground that though the application to bring herself on record was filed immediately after the death of the original Plaintiff Naresh Seth, the said Misc. Application was filed 7 months thereafter without there being any justifiable reason given

for the said delay.

5. The Respondents herein thereafter filed a Review Application bearing No. 7 of 2012 and the same was filed on 27th March, 2012. However, it is required to be noted that the Award passed in the Arbitration Proceeding was challenged by way of a Petition under Section 34 of the Arbitration and Conciliation Act, 1996 by the original Plaintiff Naresh Seth. The said Petition was admitted and was pending hearing and final disposal and was allowed by the learned Single Judge of this Court by a judgment and order dated 29th October, 2010 and the Award was set aside. It seems that the Appeal filed against the judgment and order of the learned Single Judge has also been dismissed by the Division Bench of this Court. Hence, in so far as the Arbitration Proceedings are concerned they were pending atleast till 29th October 2010 when the Petition under Section 34 was allowed and the Award was set aside.

6. It seems that the Review Application was placed before another learned Judge of the Small Causes Court Shri B.S. Wavre. In the said Review Application the ground that the said application

was required to be heard by the same learned Judge ie. Shri Gadale was neither taken nor urged. The learned Judge, therefore, proceeded to hear the Review Application and allowed the same by order dated 9th October 2013. The principal ground on which the order was reviewed was that the learned Judge found that in the face of the stay operating in respect of the Suit, the Court had erred in dismissing the Suit on 29th March 2010 for noncompliance. The learned Judge also agreed that the contention raised on behalf of the application therein ie., the Respondent herein that Order 9 Rule 5 of the CPC has no application since the Defendants were already appearing in the Suit. However, it is required to be noted that during the pendency of the Review Application till its disposal by order dated 9th October 2013 no application was made for the matter being placed before the same learned Judge Shri Gadale.

7. The Petitioners aggrieved by the said order dated 9th October, 2013 carried the matter in appeal by way of Misc. Appeal No.89 of 2013. The Appellate Bench of the Small Causes Court by the impugned order has dismissed the Appeal. The Appellate Court was of the view that the contention urged on behalf of the

Respondent that the Suit could not be proceeded with in the light of the stay granted in view of the pendency of the Arbitration Proceedings having not dealt with, commended acceptance. The Appellate Bench of the Small Causes Court observed that the said order of the dismissal of the suit has, therefore, been passed oblivious of the stay of the Suit. The Appellate Bench observed that the trial Court has allowed the Review Application having regard to the antecedent facts relating to the Respondent bringing herself on record, by filing Application **Exhibit-7** but was oblivious of the fact that the Suit was stayed. The Appellate Bench has accordingly by the impugned order dated 7th August, 2013 dismissed the Appeal.

8. The learned Counsel appearing on behalf of the Petitioners/original Defendants Ms. Panda would contend that the Review Application being not heard by the same Judge the order passed thereon was vitiated on the said ground. It was the submission of the learned Counsel that since the Award was declared on 1st December, 2006 the Arbitration Proceedings had come to an end and therefore, the stay did not operate and the Trial Court was well within its rights to dismiss the Suit for non-

compliance.

9. Per contra the learned Counsel Shri Dubash would seek to support the impugned order. The learned Counsel would seek to draw this Court's attention to the conspectus of facts, which have been narrated above and would submit that it is on the basis of the said conspectus of facts that the Review Application came to be allowed and the Appeal came to be dismissed. It was also the submission of the learned Counsel that the Arbitration Proceedings cannot be said to have come to an end in view of the pendency of the Petition under Section 34 of the Arbitration and Conciliation Act 1996.

10. Having heard the learned Counsel for the parties in my view there is no merit in the above Petition. Though undoubtedly the order was passed by the learned Judge Shri Gadale of the Small Causes Court the Review Petition was placed before another Judge of the Small Causes Court, Shri. Wavre. This may probably have been done in view of the fact that Shri Gadale either would not have been available or may have been sitting in a Bench in the Small Causes Court. Be that as it may, the Petitioners did not take the said point in the reply filed by them in the Review Application.

It seems that the said point was not urged before the learned Judge Shri Wavre, nor any application was made whilst the Review Application was pending before Shri Wavre for the same to be placed before the learned Judge Shri Gadale. In my view, therefore, it is not possible to entertain the said contention at this point of time. In any event this Court is informed by the learned Counsel that today the learned Judge Shri Gadale who passed the original order dated 29th March, 2010 is not available in the Small Causes Court. Hence, even if the contention of the learned Counsel for the Petitioner is to be accepted and the matter is remanded back to the Small Causes Court, since the learned Judge Shri Gadale is not available, the same would be a futile exercise.

11. However, what is of significance is the fact that the Suit was stayed at the behest of the Petitioners themselves by virtue of the order passed on 9th June 2005 and the said stay was to operate till the decision of the Arbitration Proceedings. Though the Award was declared on 1st December, 2006 the original Plaintiff Naresh Seth during his life time had taken exception to the Award by filing a Petition under Section 34 of the Arbitration and Conciliation Act, 1996 on 29th January 2007. Since the said

Petition was filed within the stipulated period mentioned under Section 34 there was an automatic stay of the Award, therefore, till 29th October 2010 when the learned Single Judge of this Court set aside the Award, it would have to be held that the Arbitration Proceedings stood stayed and, therefore, the stay which was operating in respect of the Suit continued to operate. Hence, on the said ground both the Courts ie., the learned Judge Shri Wavre who heard the Review Application and the Appellate Bench of the Small Causes Court, which heard the Appeal filed by the Petitioner against the order passed in the Review Application held that the Suit could not have been dismissed on 29th March, 2010. In my view, therefore, no case for interference in the Writ Jurisdiction of this Court is made out.

12. The Writ Petition is accordingly dismissed.

(R.M.SAVANT, J.)