

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 1121 OF 2014

M/S. VORA BROTHERS
AND ORS

...Applicants

Versus

MR. MAHENDRA CHIMANLAL SHAH
AND ORS

...Respondents

....

Mr. Kapil More i/b. Mahendra Patel & Associates, for the
Applicants.

Mr. Dhananjay C. Pathak, Advocate for Respondents.

....

CORAM : R. G. KETKAR, J.

DATE : 14th MARCH, 2016

P.C.

1. Heard Mr. Kapil More, learned Counsel for the
applicants and Mr. Pathak, learned Counsel for the
respondents.

2. Rule. Learned Counsel for the respondents waives
service. At the request and by consent of the parties, Rule is
made returnable forthwith and application is taken up for final
hearing.

3. By this application under Section 115 of Code of Civil
Procedure, 1908 (for short, 'CPC') the applicants have challenged

the judgment and order dated 8.8.2014 passed by learned Judge, presiding over court room No.4 of Bombay City Civil Court at Bombay in Chamber Summons No.2656/2013 in Short Cause Suit No.3430/2013. By that order, the learned trial Judge dismissed the Chamber Summons taken up by the applicants, hereinafter referred to as 'defendants, for rejecting the plaint as (1) the same is barred by principles of resjudicata, (2) the plaint does not disclose cause of action and (3) since the suit is also barred by law of limitation

4. Mr. More invited my attention to (1) the plaint in S.C. Suit No.1411/1976, (2) the prayers in the suit, (3) the order dated 9.6.1992 in that suit, (4) the order dated 1.4.2010 passed by the Division Bench of this Court (Coram: D.K. Deshmukh and V.R. Kingaonkar,JJ.) in Appeal No.943/1998. He further submitted that aggrieved by these decisions, the respondents, hereinafter referred to as the 'plaintiffs', have preferred SLP before the Apex Court which was also dismissed on 8.4.2011. He has also invited my attention to paras-8 & 9 of the affidavit in support of chamber summons and para-6 of the impugned order. He submitted that in fact on behalf of the defendants

specific contention to the effect that the previous suit was abated and fresh suit on the same facts seeking same prayers is barred is not dealt with by learned trial Judge.

5. Mr. Pathak, upon taking instructions from respondent No.1 Mr. Mahendra Chimanlal Shah submits that by consent of the parties, the impugned order may be set aside and the Chamber Summons may be restored to the file of the learned trial Judge for dealing with the contentions recorded in this order and any other contentions that may be available before the parties. The learned Counsel appearing for the parties state that the parties will appear before the trial Court on 29.3.2016 and for that purpose fresh notice need not be issued to them.

6. In view thereof, by consent of the parties, the impugned order is set aside and Chamber Summons No.2656/2013 is restored to the file of the trial Court. Having regard to the fact that the previous suit was instituted in the year 1976 and the present suit is instituted in the year 2013, the learned trial Judge is requested to decide the Chamber Summons within two weeks from the date of appearance of the parties. The learned trial Judge will deal with all contentions so

advanced by the parties. All contentions of the parties on merits are expressly kept open. Rule is made absolute in aforesaid terms. Order accordingly.

7. All the parties, including the trial Court, to act upon an authenticated copy of this order.

(R. G. KETKAR, J.)

Deshmane (PS)