

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.22 OF 2016

Fizzah Navnitlal Shah ... Applicant
Vs.
M/s. Ashapura Exports Pvt. Ltd. ... Respondent

Mr. Mayur Khandeparkar with Ms S. Tewari i/b. Mr. Mahernosh Humranwala
for Applicant.
Mr. Gaurav Mehta a/w. Ms Deepa Mani and Ms Amisha Nair i/b. India Law
for Respondent.

CORAM : R. G. KETKAR, J.
DATE : JANUARY 22, 2016

P.C. :

Heard Mr. Khandeparkar, learned Counsel for applicant and Mr. Mehta, learned Counsel for respondent at length. Rule. Mr. Mehta waives service for respondent. At the request and by consent of the parties, Rule is made returnable forthwith and the Application is taken up for final hearing.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908, applicant, hereinafter referred to as defendant, has challenged the judgment and order dated 31.10.2015 passed by the learned Judge presiding over Court Room No.2 of the Bombay City Civil Court at Greater Bombay in Short Cause Suit No.797 of 2014. By that order, the learned trial Judge overruled the objection raised by the defendant and held that City Civil Court has jurisdiction to entertain and try the Suit.

3. Defendant raised objection to the jurisdiction of the City Civil Court on the ground that dispute is essentially between landlord and tenant. In view of Section 41 of the Presidency Small Causes Court Act,

1882 and Section 33 of the Maharashtra Rent Control Act, 1999, the Small Causes Court will have exclusive jurisdiction to entertain and try the Suit. In support of this contention, reliance was placed on the decision of the Apex Court in the case of ***Mansukhlal Dhanraj Jain and others Vs. Eknath Vithal Ogale***, AIR 1995 SC 1102.

4. After arguing the Application for quite some time, Mr. Mehta, upon taking instructions from the respondent, consents for setting aside the impugned order. He submits that the issue of jurisdiction may be decided afresh keeping all the contentions of the parties open.

5. In view thereof, by consent of the parties, impugned order is set aside. The learned trial Judge shall decide the preliminary issue of jurisdiction after considering the material on record as also after considering the pleas taken by the defendant in the affidavits. The learned trial Judge will give reasons about the applicability or otherwise of the decision of the Apex Court in the case of ***Mansukhlal Dhanraj Jain*** (*supra*). Rule is made absolute in the aforesaid terms with no order as to cost.

(R. G. KETKAR, J.)

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