

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

CIVIL REVISION APPLICATION NO.56 OF 2016

Union Bank of India

.. Applicant

Versus

M/s. Batlivala and Karani

.. Respondent

Mr. Shrinivas Bhavé i/by Bhavé & Co., for the Applicant.

Ms. Shoma Maitra i/by Wadia Ghandy & Co., for the Respondent.

CORAM : R.M. SAVANT, J.

DATE : 16th FEBRUARY 2016

PC.

1. The revisionary jurisdiction of this Court is invoked against the order dated 08.10.2015 passed by the Learned Judge of the Small Causes Court, Mumbai, by which order, the application Exh.18 filed by the Applicant herein i.e. original Defendant under Order 7 Rule 11(d) of the Civil Procedure Code (for short "CPC") for rejection of the plaint on the ground that the suit filed by the Applicant is barred by the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, came to be rejected.

2. The said application for rejection of the plaint was opposed to on behalf of the original Plaintiff i.e. the Respondent herein on the ground

that since the tenancy of the Plaintiff was prior to the enactment of the Public Premises (Eviction of Unauthorized Occupants) Act, 1958, or the enacted Public Premises (Eviction of Unauthorized Occupants) Act, 1971, is not applicable to the suit premises. Reliance was sought to be placed on the judgment of the Apex Court in the case of Suhas H. Pophale Vs. Oriental Insurance Co. Ltd. and its Estate Officer reported in (2014) 4 SCC 657.

3. Per contra, on behalf of the Applicant/Defendant reliance was sought to be placed on the order of the Apex Court in Life Insurance Corporation of India Vs. Vita Pvt. Ltd. and another in Spl. Leave to Appeal (C) No.35859/2014, the judgment of the Apex Court in Ashok Marketing Ltd. and another Vs. Punjab National Bank and others reported in (1990) 4 SCC 406, the order dated 22nd April 2015 passed by this Court in Writ Petition No.1926 of 2015 in the matter of M/s. Caffé Hornby and Excel Stores Vs. The Life Insurance Corporation of India and the judgment of the Apex Court in Kaiser-I-Hind Pvt. Ltd. and another Vs. National Textile Corporation (Maharashtra North) Ltd. and others reported in (2002) 8 SCC 182 to contend that the judgment of the Apex Court in *Suhas H. Pophale's* case (*supra*), would not aid the original Plaintiff. The Trial Court has rejected the said application on the ground that the judgment in *Suhas H. Pophale's* case (*supra*), being later in

point of time to the judgment cited on behalf of the Defendant and since the issue arising out of the *Suhas H. Pophale's* case (*supra*), has been referred to the larger bench of the Supreme Court. The Trial Court was of the view that at the said stage ratio in *Suhas H. Pophale's* case (*supra*) cannot be said to be not binding. The Trial Court also referred to the order passed by the Apex Court in Spl. Leave to Appeal No.150532 of 2015 dated 24.08.2015. By which, the order/judgment of this Court in M/s. Cafe Hornby's case (*supra*) is stayed. In my view, the order passed by the Trial Court cannot be faulted with. Hence, no case for interference in the revisionary jurisdiction of this Court is made out. The Civil Revision Application is accordingly dismissed.

4. However, in the event the judgment of the larger bench of the Apex Court becomes available, the Petitioner would be entitled to renew its application as regards the maintainability of the suit and file an appropriate application considering the stage at which the suit is at the said stage, contingent upon the decision of the larger bench. If any such application is filed, needless to state that the said issue would be considered on its own merits and in accordance with law.

[R.M. SAVANT, J]