

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

WRIT PETITION NO.5960 OF 1995

Manubhai Girjashankar Oza
(Since deceased) thru' his Lrs
Priyan Manubhai Oza & Anr. ..Petitioners

V/s.

Smt.Sushilabai Wd/o Sevantilal Shah & Ors. ..Respondents

Ms.Aditi Naikare i/b Mr.Pradeep J. Thorat for the Petitioners.

None present for the Respondents.

CORAM : M. S. SONAK, J.

DATE : 13th OCTOBER 2017

P.C.

1. The challenge in this petition is to the impugned order dated 1st September, 1995 made by the Appellate Bench of the Small Causes Court (Appeal Court) setting aside the order dated 20th November, 1986 made by the Small Causes Court (Trial Court), granting relief of temporary injunction to the petitioner, in the matter of eviction of the petitioner from the suit premises in pursuance of ejectment decree dated 18th August, 1979 in Ejectment Application No.18/67E of 1970.

2. Ms.Aditi Naikare submits that ejection decree dated 18th

August, 1979 was made under Chapter VII of the Presidency Small Causes Act, 1888, prior to 1976 Amendment. She submits that Chapter VII proceeding prior to amendment, were Proceedings which were summary in nature. She submits that the Presidency Small Causes Act, 1882 itself protracted for the institution of a substantive suit, aggrieved by summary eviction under Chapter VII of the said Act. She submits that the Trial Court had correctly appreciated this position and granted interim relief to the petitioner. The Appellate Court, has however, invoked the principle of *res judicata* and on that basis vacated the interim relief granted by the Trial Court. She submits that there is jurisdictional error on the part of the Appellate Court in observing that the petitioners substantive suit was barred by principle of *res judicata* or principle of analogous to *res judicata*. She relies upon Mohandas Vishindas Chainani -V- Hiranand Assumal¹, in which, according to her Division Bench of this Court has examined the scheme of Chapter VII of the said Act and held that any decision under Chapter VII will not constitute *res judicata* in any substantive proceedings instituted by the parties thereafter.

3. Although, the issue raised by Ms.Aditi Naikare is

1 1994 (76 BLR) 494

interesting, it is neither necessary nor will it appropriate to make any observation on such issue at this stage. This is because before we can consider the position in law, the position in facts will have to be ascertained. Rather than decide such issue at this stage, the interest of justice will be served if interim protection granted by this court on 11th December, 1995 is continued till the disposal of the main suit i.e. RAD Suit No.4754 of 1981 with further directions for disposal of this suit as expeditiously as possible in any case within a period of one year from the date of filing of authenticated copy of this order.

4. As noted earlier, the interim relief is in operation since 11th December, 1995. The suit itself was instituted in the year 1981 and by now the same should have been disposed of. Accordingly leaving all contentions of all parties open, the Trial Court is directed to dispose of RAD No.4754 of 1981 as expeditiously as possible on its own merits and in accordance with law within a period of one year from the date of presentation of the authenticated copy of this order.

5. The Trial Court need not be influenced by any observations made in the interim orders made by Appeal Court and

by the Trial Court or for that matter any observation in the present order. The suit is to be disposed of on its own merits and in accordance with law. Since the interim order is continued since 11th December, 1995, it is only appropriate that the same continues until the final disposal of the suit.

6. Rule is accordingly disposed of in the aforesaid terms. There shall be no order as to costs.

7. The petitioner to appear before the Trial Court on 01st November 2017 at 11 am and to file authenticated copy of this order.

8. The petition is disposed of in aforesaid terms.

(M. S. SONAK, J.)