

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 915 OF 1997

1. Mrs. Leena H. Thomas (deleted)
2. Mr. Anthony Thomas .. Petitioners
vs.
Mr. Dominic G. Fonseca and ors. .. Respondents

Mr. Amogh Singh a/w. D.P. Singh for the Petitioner.
Mr. Owen Menezes i/b Mr. R.S. Tripathi for the Respondents.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 1 September 2017.
Date of Pronouncing the Judgment : 8 September 2017.

JUDGEMENT:-

1] The petitioners, legal representatives of the original defendant challenge the following judgments and decrees made by the Small Causes Court and the Appellate Bench of the Small Causes Court in R. A. Declaration Suit No. 4363 of 1985 instituted by the respondents herein (original plaintiffs) seeking declaration of tenancy and consequential reliefs:

a] Judgment and decree dated 9th February 1988 made by the Small Causes Court in R.A.D.Suit No. 4363 of 1985; and

b] Judgment and decree dated 23rd July 1996 made by the Appellate Bench of the Small Causes Court in Appeal No. 120 of 1988.

2] For the reference of convenience, the respondents herein shall be referred to as the plaintiffs and the petitioners herein shall be as the defendants.

3] The plaintiffs instituted R.A.D. Suit No. 4363 of 1985 in the Small Causes Court at Mumbai seeking following substantive reliefs:

“(a) that it be declared by this Hon'ble Court that the Plaintiff Nos.1 to 4 are the legal heirs and representatives of the late Goregaon A. Fonseca and they are entitled to have the tenancy right transfer in the name of the Plaintiff No.1 who is the eldest member in the family and Plaintiffs No.2 to 4 and their family members are also entitled enjoy the tenancy rights of the said ground floor premises along with Plaintiff No.1 therein i.e. House No.19, (8-C), Ranwar, Bandra, Bombay-400 050 of the Defendants her in and protected under the Bombay Rent Act.

(b) that this Hon'ble Court will be pleased to grant the permanent injunction against the Defendants, their servants and agents and hirelings restraining them from interfferring disturbing and/or removing and/or taking forcible possession of the Plaintiff premises situated at ground floor House No.19 (8-C) Ranwar, Bandra, Bombay – 400 050 except for the purpose of ingress and egress from hall of the Plaintiffs for going to the 1st floor only, otherwise then by due process of law;”

4] The defendants filed their written statement denying the case set out by the plaintiffs. However, the defendants placed reliance upon the agreement dated 11th November 1953 and contended that in terms of the said agreement, the plaintiffs can neither claim tenancy rights nor rights of exclusive user to the entire ground floor

premises of House No.19, (8-C) Ranwar, Waroda Road, Bandra, Mumbai - 400 050 (suit premises). It was submitted that the relation between the parties is governed by the Agreement dated 11th November 1953 and in terms thereof the plaintiffs can, at the highest, claim tenancy in respect of Room No.3 on the ground floor, but no tenancy in respect rest of the area on ground floor.

5] On the basis of pleadings of the parties, the Small Causes Court framed the following issues

Issues:

- “1. Do the plaintiffs prove that they are the legal heirs and representatives of the original tenant late George Albert Fonseca ?*
- 2. Do the plaintiffs prove that the said late Mr. George Albert Fonseca was the tenant in respect of the suit premises ?*
- 3. Do the plaintiffs prove that they are entitled to get transferred the tenancy right in the name of the Plaintiff No.1, who is the eldest member of the plaintiffs' family.*
- 4. Do the plaintiffs prove that they are entitled to enjoy the tenancy right in respect of the suit premises ?*
- 5. Do the plaintiffs prove that they are entitled for a declaration as per, prayer clause 'a' of the Complaint ?*
- 6. Whether the suit of the plaintiffs is maintainable.?*
- 7. Do plaintiffs prove that they are entitled to get a permanent injunction as prayed for?*
- 8. What reliefs and order ?”*

6] On behalf of the plaintiffs, Derick Fonseca (PW-1) came to be examined and was cross-examined on behalf of the defendants.

7] On behalf of the defendants, the following persons came to be examined and were cross-examined on behalf of the plaintiffs:

1] DW-1 Anthony Thomas Henriques; and

2] DW-2 Mrs. Leena P. Henriques

8] The Small Causes Court, by judgment and decree dated 8/9th February 1988, partly decreed R.A.D.Suit No. 4363 of 1985. The operative order reads thus:

“O R D E R

Suit partially decreed.

It is held that the plaintiffs are tenants in respect of room No.3 as shown in the sketch Ex.2. They are entitled to enjoy the tenancy rights in respect of said room No.3 and have rent bill transferred in their names.

The defendants are restrained from disturbing the possession of the plaintiffs in respect of said room No.3.

Interim injunction granted by this Court on 16.4.1986 shall continue till 31st March, 1988”.

9] The plaintiffs aggrieved by the judgment and decree made by the Small Causes Court instituted Appeal No. 120 of 1988 before the Appellate Bench of the Small Causes Court. No cross appeal or cross objections were lodged by the defendants. The Appellate Bench of the Small Causes Court by its judgment and decree has allowed the appeal and made the following operative order:

“O R D E R:-

Appeal of the Appellants is allowed in the following terms.

The impugned order and decree dated 9-2-1988 in RAD Suit No.4363 of 1985, passed by the Ld. Trial Judge is set aside and in its place the following order is substituted.

Substituted Order:

RAD Suit No. 4363 of 1985 is decreed in the following terms.

The appellants are hereby declared to be the tenants in respect of the entire ground floor premises as shown in sketch Ex.2 and that they are protected under the Bombay Rent Act and they are also entitled to get the rent receipt transferred in the name of appellant No.1 in respect of the entire ground floor premises.

Appellants are also entitled to get permanent injunction in terms of prayer clause (b) of the said RAD Suit No. 4363 of 1985.

No order as to costs.”

10] Mr. Amogh Singh, learned counsel for the defendants, has made the following submissions:

a] The Appeal Court has grossly misconstrued or in any case, virtually re-written the agreement dated 11th November 1953 entered into by and between the parties in holding not only that the plaintiffs are the tenants of the entire ground floor, but further holding that the defendants, who are admittedly, landlord of the entire property, are themselves, licencees of the plaintiffs in respect of major portions of the ground floor premises. Mr. Amogh Singh submits that the approach and findings recorded by the Appeal Court are contrary to well settled canons of interpretation of documents

and such findings and approach is clearly unreasonable and perverse;

b] Mr. Amogh Singh submits that there is no ambiguity in the agreement dated 11th November 1953. In any case, assuming there is some ambiguity between clauses 1 and 2 of the agreement, such ambiguity, is required to be resolved by the harmonious construction of two clauses. The Appeal Court, has virtually ignored clause 2 of the agreement and instead rewritten the terms of the agreement between the parties, which is an exercise in excess of jurisdiction. Mr. Singh has relied upon *Shin Satellite Public Co. Ltd. Vs. Jain Studios Ltd. - (2006) 2 SCC 628, Vice-Chairman and Managing Director, A.P. SIDC Ltd. and anr. vs. R. Varaprasad and ors. - (2003) 11 SCC 572* and *Progressive Constructions Ltd. vs. Chairman, National Highways Authority of India and ors. - 2009 SCC Online Del. 195.*, to contend that Courts have to read the contracts entered into between the parties as they are and it is impermissible to rewrite such contracts or to create any new one;

c] Mr. Singh submits that in this case, the plaintiffs had initially denied the execution of the agreement dated 11th November 1953. However, later on, at the stage of appeal, the plaintiffs accepted execution and validity of the agreement dated 11th November 1953. Mr. Singh submits that in fact, it was the duty of the plaintiffs to have disclosed the agreement dated 11th November 1953 in their plaint and the suppression of this vital and material document, was sufficient to disentitle the plaintiffs any reliefs in the suit. In any case, Mr. Singh submits that the defendants had examined DW-2 Mrs. Leena P. Henriques, who was one of the signatories to the agreement dated 11th November 1953. The Appeal Court has completely ignored the evidence of DW-2 Mrs. Leena P. Henriques, even though, this witness was the only person or rather best person to depose regards the intention of the party, assuming that such intention was relevant, on account of any alleged ambiguity in the context of the agreement dated 11th November 1953. Mr. Singh submits that this is a case of exclusion of vital and relevant evidence by the Appeal Court, which renders the findings recorded by the Appeal Court perverse.

11] Mr. Menezes, learned counsel for the plaintiffs, submits that the findings of fact are immune from challenge under Article 227 of the Constitution of India unless clear perversity is demonstrated and established. Mr. Menezes submits that in the present case, the two Courts, including in particular the Appeal Court has appreciated both oral as well as documentary evidence on record in its correct perspective and therefore, there is no case made out to interfere with the findings recorded by the Appeal Court.

12] Mr. Menezes submits that until the year 1976, there was no lavatory or kitchen on the 1st floor in the house in occupation of the defendants-landlords. Therefore, a provision was made in clause 2 of the agreement dated 11th November 1953 to permit the defendants user of lavatory and kitchen on the ground floor. However, the entire ground floor premises had in fact been leased out by the defendants to the plaintiffs and it is the plaintiffs who had granted a licence to the defendants to use kitchen and lavatory until the defendants making alternate arrangements for themselves on the first floor. Mr.Menezes points out that since the year 1976, the defendants have admittedly made arrangements for kitchen and lavatory on the 1st floor, as a consequence of which the license granted by the plaintiffs

has come to an end. In such circumstances, the plaintiffs were entitled to a declaration of tenancy and an injunction restraining the defendants from using the ground floor premises, except for the limited purpose of ingress and egress from the hall of the plaintiffs for going to the 1st floor of the house, which is owned and occupied by the defendants. Mr. Menezes submits that from bare reading of the agreement dated 11th November 1953, it is quite evident that the defendants-landlords have let out the entire ground floor premises of the house to the plaintiffs. Therefore, Mr. Menezes submits that the plaintiffs have quite correctly been declared tenants in respect of entire ground floor premises.

13] The rival contentions now fall for determination.

14] This entire matter turns on the interpretation of agreement dated 11th November 1953. In fact, both the learned counsel made extensive submissions as to the interpretation of clauses of agreement dated 11th November 1953. From this, it is evident that most relevant and vital documentary evidence in this matter is the agreement dated 11th November 1953. Since this so, it was the bounden duty of the plaintiffs to have referred to this agreement

dated 11th November 1953 in their plaint and list of documents in support of plaint. However, the plaintiffs, virtually suppressed the agreement dated 11th November 1953 and even went to the extent of contending that such a document was never executed by them or their predecessor-in-title. In the Appeal Court, however, the plaintiffs admitted to the execution of agreement dated 11th November 1953.

15] The Appeal Court, in its impugned judgment and decree dated 23rd July 1996, at paragraph 29, has specifically recorded that the plaintiffs have accepted the validity of the agreement dated 11th November 1953 (Exhibit-5). Paragraph 29 reads thus:

“29. It appears from the cross-examination of appellant No.2 on page 7 of the notes of evidence conducted by the Ld. Advocate for the respondents as also from the evidence in cross-examination of the respondents No.1 on page 35 conducted by the Ld. Advocate for the appellants that the tenancy agreement dated 11-11-1953 was disputed at the trial stage by the appellants and they have denied the signature of the original tenant on the same and they have termed it as a fabricated document prepared afterwards and the signature of original tenant on it being fabricated. But at the stage of hearing of appeal before us, the Ld. Advocate for the appellants has made statement that the appellants admit the said tenancy agreement Ex.5. Therefore, we need not waste our time in considering the validity or otherwise of the agreement.”
(emphasis supplied)

16] In *S.P. Chengalvaraya Naidu (dead) by LRs. vs. Jagannath (dead) by Lrs. And ors.* - AIR 1994 SC 853, the Hon'ble Supreme

Court has held that it is a duty of party to a legal proceedings to disclose relevant documents and if there is suppression, the party which has indulged in suppression can be summarily non-suited.

17] The relevant observations from *Chengalvaraya (supra)*,. read thus:

“7. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that “there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence.” The principle of “finality of litigation” cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

8.
Non-production and even non-mentioning of the release deed at the trial tantamounts to playing fraud on the court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Exhibit B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the

other side than he would be guilty of playing fraud on the court as well as on the opposite party.”

18] In this case, since the plaintiffs suppressed agreement dated 11th November 1953 and even went to the extent of styling such agreement as a fabrication, when, the agreement was disclosed by the defendants, applying Chengalavarya principle, it was possible to dismiss the plaintiffs' suit in its entirety. However, since both Small Causes Court and the Appellate Bench of the Small Causes Court have not adopted such a course of action, it will not be appropriate to non-suit the plaintiffs at this stage, even though, the plaintiffs, were duty bound to disclose the agreement dated 11th November 1953 in their plaint seeking for equitable reliefs like declaration and injunction. There was no issue framed by the Small Causes Court regards suppression of relevant and material documents. The suit was instituted by the children of Robert (George Fonseca). Accordingly, there is no clear material on record to establish that the plaintiffs were fully aware of the existence of the agreement dated 11th November 1953. In such circumstances, non-suiting the plaintiffs, would resulting in depriving them of tenancy rights altogether, which, would, in the facts and circumstances of the present case, be quite a harsh consequence. Primarily for this reason,

it is not possible to accept Mr. Amogh Singh's contentions that the plaintiffs' suit deserves summary dismissal as the plaintiffs had indulged into suppression of relevant and vital document in the form of agreement dated 11th November 1953. However, this aspect assumes importance for purposes of appreciating Mr. Singh's contention that the findings of Appeal Court are vitiated by perversity, since, the Appeal Court has ignored the evidence of DW-2 Mrs. Leena P. Henriques, who was one of the signatories to the agreement dated 11th November 1953 and therefore, in the best position to explain the said document as well as the intention of the parties.

19] Since, much turns on the agreement dated 11th November 1953, it will be only appropriate to transcribe the said agreement in its entirety for convenience of reference.

“THIS AGREEMENT made this Eleventh day of November 1953 Between (1) THOMAS PETER HENRIQUES and (2) MRS. LENA THERESA HENRIQUES of Bandra Catholic Christian Inhabitants (hereinafter called the “Lessors”) of the one part And Robert (George) FONSECA also of Bandra Christian Inhabitant (hereinafter called the “Lessee”) of the other part WHEREAS the Lessors are the owners of one storey building, bearing House No.19, situate at Ranwar, Waroda Road, Bandra AND WHEREAS one Ignatius John Fonseca had been a tenant of the Lessors in the whole of the said house, containing the ground floor and the upper floor AND WHEREAS the Lessee was a sub-tenant of the said tenant Ignatius John Fonseca as a monthly tenant

presence of:-

1. *sd/-*

2. *sd/-*

SIGNED and DELIVERED by the) Sd/-
within – named Lessee in the)

presence of:-

1. *sd/-*

2. *sd/-*

20] The agreement, execution of which is now admitted by the plaintiffs, in its recital states that the defendants are the owners of one storey building bearing House No. 19 situated at Ranwar, Waroda Road, Bandra. One Ignatius John Fonseca was the tenant of the entire house. George Gonseca, the predecessor-in-title of the plaintiffs was sub-tenant of tenant Ignatius Fonseca in respect of only a portion of ground floor, paying monthly rent of Rs.22/-. In the the recital, the expression used is “*only on a portion of the ground floor of the said house*”.

21] The agreement dated 11th November 1953, further recites that the defendants issued notice to Ignatius Fonseca to vacate the tenanted premises, as the defendants required the premises *bona fide* and reasonably for their own use and occupation. Thereupon Ignatius Fonseca surrendered the possession of the 1st floor of the house and went to reside in his own house at Bandra. Thereafter an arrangement was arrived at between the defendants and George

Fonseca, to continue his tenancy of George Fonseca on the ground floor on certain terms and conditions. It is important to note that the recitals do not refer to “*entire ground floor*” Mr. Menezes, learned counsel for the plaintiffs is therefore, not right in his submission that the recitals to the agreement make out a case of plaintiffs' tenancy to the entire ground floor of the house.

22] Clause 1 of the agreement dated 11th November 1953 describes the tenanted premises on the ground of the said house so as to consist of one Hall, one dining room, one bed room and a kitchen. There is no dispute that the sketch at Exhibit-2 represents the true and correct sketch of the ground floor. In the sketch, the Hall and dining room are included in the areas marked as (1),(2) and (4), bedroom is marked as (3) and the kitchen along with the Lavatories/bath rooms therein are marked as (5). In the sketch, there is a ladder indicated in rooms marked as (2) and (5). Even the plaintiffs have admitted that the ladder in room No.2 is the only ladder by which the defendants can access the 1st floor of room of which they are owners and occupiers. Therefore, even the plaintiffs, in the reliefs applied for them, had not applied for any injunction to restrain, the defendants from ingress and egress through the Hall

upto the ladder which leads to 1st floor of the house. Learned counsel for the parties also made it clear that such ingress and egress is permitted / not obstructed, so that the defendants have access to the 1st floor, which they admittedly own and occupy.

23] Clause 2 of the agreement, however, provides that both the plaintiffs and defendants have joint and common and amicable use of the kitchen, lavatory and bathroom without any let and hindrance from any of them. This is obviously has reference to room No.5 in the sketch at Exhibit2. As noted earlier, room No.5 depicts the kitchen, lavatories and bathrooms on the ground floor. Significantly, there is also a ladder indicated in Room No.5, which leads to first floor. However, Mr. Amogh Singh, learned counsel for the defendants, contends that the ladder indicated in Room NO.5 was for the use of sweepers and other menial staff, since, the same is quite steep and not useful for the family members of the defendants to access the kitchen and lavatories. Mr. Singh submits that there is oral evidence on record to this effect.

24] DW-2 Mrs. Leena P. Henriques, who is one of the signatories to the agreement dated 11th November 1953 has deposed on behalf of

the defendants and Mr. Amogh Singh is right that the evidence of DW-2 Mrs. Leena Henriques is required to be given due credence, particularly since the plaintiffs had even denied the execution of agreement dated 11th November 1953. Mr. Amogh Singh is also right in his submission that the Appeal Court has virtually ignored the evidence of DW-2 Mrs. Leena Henriques in the matter of interpretation of the clauses of agreement dated 11th November 1953. The virtual non-consideration of relevant and vital piece of evidence is also a species of perversity.

25] The reasoning of the Appeal Court that clause '2' of the agreement dated 11th November 1953 signifies a licence created by the plaintiffs, who are themselves claiming rights of tenancy, in favour of defendants, who are admittedly the owners and the landlords of the entire house, including the ground floor premises, is, in the facts and circumstances of the present case, very difficult to accept. Such a reasoning or interpretation, virtually amounts to ignoring not only the express terms of the documents but amounts to re-writing the contract between the parties. Such an exercise is clearly impermissible and to that extent, Mr. Amogh Singh is right that the Appeal Court has exceeded the jurisdiction vested in it.

26] Rather, upon harmonious construction of clauses 1 and 2 of the agreement dated 11th November 1953, coupled with the oral evidence of DW-2 Mrs. Leena P. Henriques, which the Appeal Court has virtually ignored, it is quite clear that the tenancy of the plaintiffs was confined to Hall, dining room and the bedroom, which is indicated in numbers 1,2,3 and 4 in sketch at Exhibit-2. Further, notwithstanding such tenancy, the plaintiffs, were not entitled to restrain the ingress and egress of the defendants through the Hall/dining room marked in the sketch as 1 and 2 to the defendants to access ladder for the 1st floor, which is admittedly, owned and occupied by the defendants.

27] Insofar as the kitchen, lavatories and bathrooms in the room indicated under No.5 in the sketch at Exhibit-2, it is clear that no right of tenancy was created by the defendants in favour of the plaintiffs, but both the plaintiffs as well as defendants were conferred unqualified rights to the joint, common and amicable use of the kitchen, lavatories and the bathroom on the ground floor without any let and hindrance from any of them. Clauses 1 and 2 of the agreement have to be interpreted harmoniously. Besides, reference is also required to be made to the recitals, which, assist in

the resolution of ambiguities. In this case, the recitals very specifically militate against tenancy of the entire ground floor. Further, the express wordings of clause 2 and the deposition of DW-2 Mrs. Leena P. Henriques very clearly tilts the weight of evidence towards declaring the plaintiffs as tenants in respect of Hall, dining room and bedroom, i.e., areas marked under 1,2, 3 and 4 of sketch at Exhibit-2, subject to the rider of ingress and egress. The Appeal Court has exceeded jurisdiction in declaring the plaintiffs tenants in respect of kitchen, lavatories and bathroom on the ground floor, i.e., the portion marked under No.5 in the sketch at Exhibit-2. The denial of such declaration, however, does not mean the the plaintiffs will not have any right to the use of kitchen, lavatories and the bathrooms indicated under No.5 in the sketch at Exhibit-2. All that this means is that the plaintiffs cannot claim any tenancy to the said portion and further, the plaintiffs will have to use the said portion jointly and in common with the defendants. To that extent, the decree made by the Appeal Court warrants modification.

28] Further, it is also necessary to clarify that the evidence on record does not suggest that the defendants can access the kitchen, lavatories, bathroom, i.e., the portions indicated under No.5 in the

sketch at Exhibit-2 through the Hall or dining room as urged by Mr. Amogh Singh. The defendants, will have to access this portion through the ladder which is indicated in the portion indicated under No.5 in sketch at Exhibit-2. On the basis of material on record, it is not possible to accept that the said ladder in room No.5 was meant only for the use of sweeper and menial staff. If the access is to be permitted through Hall/dining room, then, it is possible, as contended by Mr. Menezes that the defendants will deprive the plaintiffs of privacy altogether. In any case, conferment of any such right would be in excess of what was contemplated by the agreement dated 11th November 1953, upon which, the defendants themselves place reliance. If, the ladder in room No.5 is too steep, nothing prevents the defendants, who are admittedly, the owners of entire house, to provide a different or more convenient ladder. However, there is no question of permitting the defendants to access the kitchen/lavatories/bathroom through the portion marked as 1,2,3 and 4 in the sketch at Exhibit-2. Further, the material on record does indicate two separate shelves in the kitchen, which is consistent with what is set out in clause 2 of the agreement dated 11th November 1953.

29] Accordingly, the impugned judgments and decrees made by the Small Causes Court and the Appellate Bench of the Small Causes Court are modified. R.A.D. Suit No. 4363 of 1985 instituted by the plaintiffs is decreed in the following terms:

a] The plaintiffs are declared as tenants in respect of the portion on the ground floor indicated under Nos.1,2,3 & 4 in the sketch at Exhibit – 2, in respect of which, they are entitled to protection under Bombay Rent Act. They are also entitled to get receipts in the name of Dominic G. Fonseca, in respect of such portion of ground floor of the said House No.19 (8-C), Ranwar, Bandra, Bombay-400 050;

b] The plaintiffs and defendants, consistent with clause 2 of the agreement dated 11th November 1953 are entitled to joint, common and amicable use of the kitchen and lavatories and bathroom, i.e., portion indicated under No.5 in the sketch at Exhibit-2, without any let and/or hindrance from each other;

c] The defendants are restrained by way of injunction from interfering with or dispossessing the plaintiffs from the portion

of the ground floor indicated in sketch at Exhibit-2, otherwise than by due process of law. Such injunction shall, however, not affect the right of defendants to ingress and egress to the 1st floor premises owned and occupied by them. Such access shall be from the ladder indicated in room No.2 in the sketch at Exhibit-2. Further, such injunction shall not affect the joint rights of the defendants to the use of kitchen, lavatories and bathroom in the portion indicated under No.5 in the sketch at Exhibit-2. However, the defendants, shall access the portion indicated under No.5 only from the ladder in room No.5. Further, the defendants, shall be entitled to replace the ladder, if the existing ladder is too steep or otherwise inconvenient for their use;

d] The Small Causes Court to draw out a decree in terms of the aforesaid within a period of two months from today.

30] Rule is made partly absolute in the aforesaid terms. There shall however, be no order as to costs.

31] Certified copy is expedited.

(M. S. SONAK, J.)