

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9324 OF 2016

Smt. Appi Madhava Devadiga & Anr. ...Petitioners

Versus

Mr. Abdul Hak Abdul Aziz Ansari & Anr. ...Respondents

Mr. P.D. Dalvi, a/w Mr. Virendra Joshi, for the Petitioners.

Mr. J.N. Jayale, for the Respondents.

CORAM : N.M. JAMDAR, J.

DATE : 2 February 2017

ORAL ORDER :

1. Heard the learned Counsel for the parties. At the time of issuance of notice, the learned Single Judge (Mr. R.G. Ketkar) passed the following order:-

“ Heard Mr. Dalvi, learned Counsel for applicants.

2. By this application under Section 115 of the Code of Civil Procedure, 1908, applicants, hereinafter

referred to as 'defendants' have challenged the judgment and order dated 29.04.2016 passed by the Appellate Bench of the Small Causes Court in Miscellaneous Appeal No.26 of 2016. By that order, the appellate Court allowed the Appeal and quashed and set aside the judgment and order dated 07.01.2016 passed by the learned Judge, presiding over Court Room No.36 of the Court of Small Causes, Mumbai below exhibit-10 in R.A.E. Suit No.137 of 2015. The learned appellate Court allowed the application exhibit-10 and issued injunction restraining the defendants from unlawfully subletting and / or assigning and /or creating any third party right and interest or alienating or parting with possession of the suit premises and raising height of suit premises and / or making addition / alteration of whatsoever nature in the suit premises, till final disposal of the Suit.

- 3. In view thereof, leave to convert this C.R.A. into Writ Petition is granted. Amendment shall be carried out within one week from today.*
- 4. Mr. Dalvi states that Ms Vanita Pravin Kotian*

(Vanita Hannaya Devadiga), daughter of applicant No.2 is present in the Court. He has tendered photocopy of the PAN card, which is taken on record and marked 'X' for identification. Upon taking instructions from her, he states that applicants / defendants will neither create third party interest nor part with possession of the suit premises. Statement made by Mr. Dalvi, on instructions, is recorded.

5. In view of the statement, issue notice to respondents, returnable on 30.08.2016.”

2. It is the contention of the learned Counsel for the Petitioners that the Respondents are not the landlords of the premises and the structure is located in the area notified as slum and therefore, the Court does not have jurisdiction. However, these are submissions made on merits. To a query, the learned Counsel for the Petitioners, on instructions, states that the Petitioners are abiding by the statement made on 1 August 2016. If that is the position that the grievance of the Respondents also stand satisfied. Therefore, without going into the merits of the rival contentions, in view of the stand taken by the learned Counsel for the Petitioners and keeping all contentions open in the Suit, the Writ Petition is disposed of in

terms of statement made by the learned Counsel for the Petitioners, which will continue till disposal of the Suit.

3. As far as the issue of Petitioners altering the suit premises is concerned, since the Suit is pending, if any such act committed by the Petitioners, it will be always open to the Petitioners to seek appropriate amendment and seek a relief as a consequence.

[N.M. JAMDAR, J.]