

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6354 OF 2017

Neel Controls & Anr	...Petitioners
<i>Versus</i>	
BSG Investment Corporation & Ors	...Respondents

Mr DS Sabnis, *for the Petitioners.*
Ms Ranjana Parekh, *for Respondent No. 1.*
Mr Prayag Joshi, *i/b Bipin Joshi, for Respondent No. 2.*

CORAM: G.S. PATEL, J
DATED: 1st November 2017

PC:-

1. **Rule**, returnable forthwith. By consent, taken up for hearing and final disposal.

2. The present petition is directed against an order dated 19th April 2017 of the Appellate Bench of the Court of Small Causes at Mumbai. By that order, the petitioner's appeal against the Trial Court order dated 24th October 2015 on the 1st respondent's review application was dismissed. The Trial Court reviewed its own order dated 17th December 2014. It had not earlier granted the 1st respondent-plaintiff relief in terms of prayer clause (c) of the application filed by the plaintiff below Exhibit 9 for an order of deposit of arrears. In the review petition, the Trial Court, allowing

the review, straightaway granted that relief. The Appellate Bench, as I have noted, dismissed the Appeal.

3. The only point that arises is that while granting the relief in terms of prayer clause (c) (operative direction No. 2 of the Trial Court order at page 81) the petitioner was not heard and was given no opportunity to file its say. This is the limited reason justifying interference.

4. Accordingly, rule is made absolute in the following terms:

- (a) The order of the Trial Court to the extent it directs deposit of arrears of maintenance in accordance with Exhibit “F” is set aside;
- (b) Accordingly, the Appellate Court order is also set aside;
- (c) The plaintiff’s application below Exhibit 9 is restored to file in regard to prayer clause (c) for an order for deposit of arrears of compensation;
- (d) The petitioner will file affidavit in reply within two weeks from today;
- (e) No affidavit in rejoinder is to be filed without leave of the Trial Court and, in any case, the time to file rejoinder is not to be more than one week;

(f) The Trial Court is requested to dispose of this application for relief in terms of prayer clause (c) of the plaintiff's application below Exhibit 9 at its earliest convenience and, in any event, on or before 11th December 2017;

5. All contentions are specifically kept open on both sides.

6. The writ petition is disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J)