

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 3399 OF 2016

Shri. Krishna Padu Vare	...Petitioner
<i>Versus</i>	
Shri (Dr.) Kamaleshchadra Jayantiprasad Shrivastav	...Respondent

With
Writ Petition NO. 3400 OF 2016

Smt. Jayshri Jagu Vare	...Petitioner
<i>Versus</i>	
Shri (Dr.) Kamaleshchadra Jayantiprasad Shrivastav	...Respondent

....
Mr.Prashant Bhavake, Advocate for the Petitioners.

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CORAM : R. G. KETKAR, J.

DATE : 25th JANUARY, 2017

P.C.

1. Not on board. At the request of Mr.Bhavake taken up for admission.
2. Heard Mr. Prashant Bhavake, learned Counsel for the petitioners, at length.
3. Writ Petition No.3399/2016 takes exception to the judgment and order dated 12.8.2015 passed by the learned Jt.

Civil Judge, Junior Division, Thane below Exhibit-32 in R.C.S. No.1578/2012. By that order, the learned trial Judge allowed the application filed by the defendant under Section 9-A of C.P.C. for rejection of the plaint and ordered return of the plaint to the plaintiff.

4. Writ Petition No.3400/2016 takes exception to the judgment and order dated 12.8.2015 passed by the learned trial Judge below Exhibit-41 in R.C.S. No.1579/2012. By that order, the learned trial Judge allowed the application Exhibit-41 filed by the defendant and ordered rejection of plaint.

5. In support of these Petitions, Mr. Bhavake submitted that on the face of it, the impugned orders are bad and are liable to be set aside. He submitted that the application was made under Section 9-A of C.P.C. for rejection of the plaint. The learned trial Judge instead of rejecting the plaint, ordered return of the plaint. I do not find any merit in these submissions. Perusal of the impugned order shows that after considering the objection raised by the based on Section 42 of the Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971, the learned trial Judge held that the Civil Court has no jurisdiction to entertain and try the suit and

accordingly ordered return of the plaint. Order XLIII Rule 1(a) provides for an appeal under Section 104 of C.P.C. against the order passed under Order VII Rule 10 returning the plaint. In my opinion, the impugned orders are clearly referable to Order VII Rule 10 of C.P.C. against which appeal is provided. As the petitioners have equally efficacious alternate statutory remedy of filing an appeal, these Petitions cannot be entertained and are accordingly dismissed on the ground that they are not maintainable. The petitions fail and the same are dismissed reserving liberty to the petitioners to challenge the impugned orders by filing Misc. Civil Appeal/Appeal From Order as contemplated by Order XLIII Rule 1(r) of C.P.C. In case, the petitioners prefer appeals within three weeks from today, the time spent by them in prosecuting these Petitions from 7.9.2015 till date shall be excluded by the Court while considering application for condonation of delay. Registry is directed to return the certified copies filed by the petitioners. It is made clear that I have not examined the merits of the case. Order accordingly.

(R. G. KETKAR, J.)