

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

CIVIL WRIT PETITION NO.10886 OF 2016

AND

CIVIL WRIT PETITION NO.10885 OF 2016

Mr. Hasmukh Bhogilal Shah
since deceased & Anr.

... Petitioners

vs.

Mr. Chandrakant Babulal Shah & Ors.

... Respondents

Mr. Ajay Shah – Petitioner No.2 present in Court in both Petitions.
Mr. Rajesh Chheda for the Respondents in both Petitions.

CORAM : N.M. Jamdar, J.

DATED : 16 February, 2017

ORDER

By an order dated 27 January 2017, these Petitions are placed on board by way of last chance. In view of this order passed in presence of both the Advocates, these Petitions are taken up for disposal.

2 By the impugned order the Appellate Bench of Small Causes Court has rejected the Application filed by the Petitioner below **Exhibit 17** in Appeal No.460 of 2015 wherein the Petitioner has sought dismissal of the RAE Suit No.1585/2321 of 2006 instituted by the Respondents on the ground that the Respondents had practiced fraud

upon the trial Court. The decree has already been passed in the RAE Suit No.1585/2321/2006 against which a substantive Appeal has been preferred by the Petitioners. The Appellant Bench has observed that the ground which the Petitioners seek to contend is a challenge to the judgment and decree passed and therefore, without going into the merits of the judgment, at a preliminary stage, the Application could not be allowed. Therefore, the Appellate Bench has not closed the arguments of the Petitioners on merits but has simply deferred them till the hearing of the Appeal. There is no error committed by the Appellate Bench. The Appellant Bench will no doubt hear the Appeal on its own merits and pass suitable orders. In these circumstances, the Writ Petition No.10886 of 2016 cannot be entertained and it is accordingly disposed off.

3 As far as **Writ Petition No.10885 of 2016** is concerned the Appellate Bench has fixed the compensation of the suit premises at the rate of Rs.20,000/- per month. Prima facie perusal of the impugned order does not show that any cogent material has been referred to. The learned Counsel for the Respondents states that a valuer's report will be tendered. It is open to the Petitioners also to do so if the Petitioners are controverting the compensation so fixed. To enable the parties to place their respective valuers' report on record. Stand over to 16 March 2017.

4 It is clarified that the deposit made by the Petitioners pursuant to the order dated 21 September 2016 will be subject to further orders to be passed in the said Petition and subject to adjustment, if any.

(N.M. Jamdar, J.)