

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

**CIVIL APPLICATION NO. 248 OF 2017
IN
REVIEW PETITION (ST.) NO. 25933 OF 2017
IN
FIRST APPEAL NO. 1860 OF 2013**

Anant Govind Tamhankar (since deceased)
through his legal representatives
Milind Anant Tamhankar & Anr. ...Applicants

Versus

Shilpa Ashok Nayak & Ors. ...Respondents

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Mr.Atul Damle, Senior Advocate i/b. Mr. Kunal M. Damle for the Applicants.
Ms. Swati Sawant i/b. S.K. Legal Associates for Respondent No.1.
Mr.P.G.Lad a/w. Ms.Sayli Apte for Respondent No.2.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: OCTOBER 10, 2017**

P.C. :

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1. Learned Senior Counsel for the applicants shows the service on respondent no.3/ developer. Service is taken on record and marked as **Exhibit -1** for identification. Learned Senior Counsel submits that he does not seek any relief against respondent no.3. He further submits that there is a delay of 50 days in filing the Review Petition, as the applicants took time for seeking legal assistance.

2. Learned counsel for the respondents submits to the Orders of this Court.
3. Though served, none appears for respondent no.3.
4. In view of uncontroverted submissions and the reasons mentioned in para 3 of the Civil Application, delay of 50 days is condoned. Civil Application is allowed.
5. Review Petition to be numbered.

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6. In First Appeal, the plaintiffs were directed to file a Suit before the Small Causes Court, in view of the judgment in the case of *Prabhudas Damodar Kotecha & Ors. Versus Manharbala Jeram Damodar & Ors.* reported in (2013) 15 SCC 358.
7. Learned Senior Counsel for the applicants submits that this judgment is not attracted to the present set of facts, prayers and in view of the reliefs claimed in the plaint. He further submits that the relief was sought against respondent no.2- MHADA and the said relief came to be granted. Under such circumstances, the Suit cannot be filed before the Small Causes Court, but it lies before the City Civil Court. He further submits that the Maharashtra Rent Control Act is not applicable to the MHADA , as it is a Semi Government Body.

8. Learned counsel for respondent no.2 supports the submissions made by the learned Senior Counsel for the applicants.

9. In this Petition, the order of my brother Judge Shri Gautam Patel is sought to be reviewed and, therefore, it is to be placed before the same Judge.

10. Interim protection granted by this Court by order dated 23.06.2017 is extended by 60 days from today.

(MRIDULA BHATKAR, J.)