

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.249 OF 2016

WITH

CIVIL APPLICATION NO.684 OF 2016

IN

CIVIL REVISION APPLICATION NO.249 OF 2016

Parmanand Kashiram Dave and others ... Applicants

Vs.

M/s. Ish Homes Private Limited ... Respondent

WITH

CIVIL APPLICATION NO.274 OF 2016

IN

CIVIL REVISION APPLICATION NO.249 OF 2016

Kalpesh Kumar Parmanand Dave ... Applicant

Vs.

M/s. Ish Homes Private Limited ... Respondent

Mr. Mayur Khandeparkar i/b. Mr. Tanvir Abdul Hamid Shaikh for Applicants.
Mr. G. S. Godbole, Senior Advocate i/b. Mr. Khan Javed Akhtar for
Respondent.

CORAM : R. G. KETKAR, J.

DATE : FEBRUARY 20, 2017

P.C. :

Heard Mr. Khadeparkar, learned Counsel for applicants and
Mr. Godbole, learned Senior Counsel for respondent at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicants, hereinafter referred to as 'defendants', have challenged the judgment and order dated 12.12.2015 passed by the learned Judge, City Civil Court, Mumbai in Short Cause Suit No.4695 of 2013. By that order, the learned trial Judge overruled the objection raised by the defendants to the jurisdiction of the City Civil Court. While answering the preliminary issue framed under Section 9-A, the learned trial Judge held that Civil Court has jurisdiction

to entertain and try the Suit.

3. After arguing the Application for quite some time, Mr. Khandeparkar, upon taking instructions, seeks permission to withdraw this application with liberty to file Review Application / Petition and also to lead evidence before the trial Court on the ground that the conveyance deed dated 15.07.2006 as also application filed by the respondent plaintiff in the Small Causes Court for amending the plaint were not available with the defendants at the time of hearing of preliminary issue. He submitted that if such review application / petition is taken out, the learned trial Judge may be directed to decide the same on its own merits without being influenced by the observations made in the impugned order.

4. Mr. Godbole submitted that if such liberty is given to the defendants, all contentions of the plaintiff, including the maintainability of such review application / petition as also objection as to whether defendants can lead evidence, may be kept open.

5. Mr. Khandeparkar assures that within two weeks from today, defendants will file review application / petition and serve copy in advance on the other side. Mr. Godbole submitted that it may be clarified that notwithstanding pendency of the review application / petition, the trial Court will consider prayer for ad-interim relief in terms of Section 9-A(2) of C.P.C.

6. In view thereof, it is clarified that in the event of defendants filing review application / petition within two weeks from today, the time spent in prosecuting this C.R.A. from 18.02.2016 till today shall be excluded while considering the application for condonation of delay. It

is also clarified that pendency of review application / petition will not preclude the learned trial Judge from considering prayer of the plaintiff in terms of Section 9-A(2) of C.P.C.

7. In view thereof, on the motion made by Mr. Khandeparkar, C.R.A. is allowed to be withdrawn with liberty as prayed for. All contentions of the parties on merits are expressly kept open. It is made clear that I have not examined the merits of the case.

8. In view of the disposal of the C.R.A., Civil Application No.274 of 2016 for stay as also Civil Application No.684 of 2016 for additional evidence do not survive and the same are disposed of. Order accordingly.

(R. G. KETKAR, J.)

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