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

CIVIL REVN. APPLICATION NO. 601 OF 2016

Mr. Ashok Janardan Mishra and Anr. ... Applicants.

V/s.

Mr. Laxmikant Murlidhar Sharma and Ors. ... Respondents.

Mr. P.M. Shah a/w. Ms. Payal Shethia and Ms. Meetal Savla i/b.
Haresh Lulia for the Applicants.

Mrs. Shweta Sharma i/b. Siddharth Sharma for the Respondents 1 to
6.

CORAM : N.M. Jamdar, J.

25 January, 2017.

Oral Order :-

The Applicants have challenged the concurrent judgments and orders passed by the learned Small Causes Court, Mumbai and the Appellate Bench of Small Causes Court decreeing the suit filed by the Respondents – landlord and dismissing the Appeal filed by the Applicant.

2. The Suit bearing T.E. & R. Suit No. 96 of 2003 filed by the Respondent – landlord seeking possession of the suit property

from the Applicants. The suit property was described as a open plot situated on the back side of Plot Nos. 12,13 and 14 at the property known as Solicitor's Compound, Malad (East), Mumbai – 400 097. It was stated that after the property was let out to the deceased tenant, some super structures were constructed. The Applicants were duty bound to pay the rent, which was not paid and by issuing a notice on 9 August 2002, the tenancy was sought to be terminated and possession of the suit premises was sought. The written statement was filed by the Applicants wherein it was stated that the description of the suit property is not correct and that there is no relationship of landlord and tenant. The learned Small Causes Court Judge held that the suit property was properly described and there existed relationship of landlord and tenant and by issuing a notice under Section 106 of Transfer of Property Act, which was even replied to the tenancy was validly terminated and accordingly, by judgment and order dated 3 May 2011, the learned Small Causes Judge decreed the suit. The Appeal was filed bearing No. 23 of 2011 in the Appellate Bench of Small Causes Court by the Applicant, which was dismissed by the Appellate Bench by judgment and order dated 2 August 2016. Thereafter, the present Revision Application is filed.

3. The learned Counsel for the Applicants sought to tender a notification issued under the provisions of Maharashtra Slum Area Improvement Clearance & Redevelopment Act, 1971 dated 29

December 2016. It was contended that in view of this notification which goes to the root of the matter, the case is made out for admission of the Revision Application as no steps have been taken by the Respondent – landlord to get the notification set aside and the notification exists as on date. Section 22(1)(b) of the Act states that the decree which is granted in respect of premises situated in an area covered by the notification cannot be executed without the permission of the Competent Authority and therefore, there is no bar to hear the Civil Revision Application and only impediment in the way of the Respondent – landlord is at the time of execution of the decree, for which permission of the Competent Authority will have to be sought.

4. On merits, the learned Counsel for the Applicants firstly submitted that the suit property has not been properly described. He submitted that the description of the property in the plaint is totally vague. This submission has been considered by both the Courts. Perusal of the plaint shows that the property was described in schedule annexed to the plaint. The Courts below have found that boundaries were described in respect of the suit property and there is no doubt regarding its identity. Therefore, the contentions raised by the learned Counsel for the Applicants on this count cannot be accepted. Nothing has been shown as to the consequence of mis-description, if any.

5. Second contention that was advanced by the learned Counsel for the Applicants was regarding existence of the landlord – tenant relationship. It has come on record that the original tenant had filed an application for fixation of standard rent in respect of the suit property. Taking note of this conduct, both the Courts have held that the Applicants had accepted the position that they are tenants in respect of the suit property. The learned Counsel for the Respondent also pointed out the contentions of the Application from the cross-examination that the Applicants are claiming through the original tenant. Therefore, the Applicants will be bound by the stand taken by the original tenant. Both the Courts therefore are not in error in negating the contentions of the Applicants as regard the existence of the relationship. The notice is served and the tenancy has been duly terminated. In view of the above position, no interference is warranted in the impugned orders. The Revision Application is accordingly rejected.

6. No question for grant of continuation of any ad-interim order or grant of any interim order, as, even admitted by the learned Counsel for the Respondent, that without permission of the Competent Authority, the decree cannot be executed.

(N.M. Jamdar, J.)