

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

**SECOND APPEAL NO.154 OF 2016
WITH**

CIVIL APPLICATION NO.254 OF 2016

Smt. Shabana Sajjad Mujawar Appellant
thru' Shri. Nadeem Sajjad Mujawar

Vs.

Shri. Rashid Gulab Chittewan & Ors. Respondents

Mr. Tanaji Mhatugade for the Appellant and for Applicant in CA.
Mr. Manoj Patil for Respondent No. 1.

Coram : N.M. Jamdar, J.

Date : 20 April 2017

ORAL ORDER :

The Appellant is the original defendant no.3 in Regular Civil Suit No.2139 of 2012 filed by Respondent No. 1- Plaintiff. The Respondent no.1 filed a suit in the Court of Civil Judge, Senior Division, Kolhapur for a declaration, mandatory and perpetual injunction.

2 It was the contention of the Respondents-Plaintiffs that the State Authorities have wrongfully given permission to the Appellant to start a Video parlour, which was within 75 mtrs. radius of the existing shop of the Respondent-Plaintiff. The learned Civil Judge decreed the suit by the judgment and order dated 26 February 2014 taking note of the relevant Rules. The learned Civil Judge held that such a permission to start video parlour in contravention of the Rules could not have been granted, and quashed the order in respect of the shop of the Appellant. An appeal bearing Civil Appeal No.111 of 2014 was filed by the Appellant in the District Court, Kolhapur. Before the District Court, the Appellant sought to place a letter dated 6 October, 2010 of the Additional Secretary, Home Department, Government of Maharashtra addressed to the Police Commissioner, Bruhan Mumbai regarding relaxation of the condition of distance. The learned District Judge observed that there was no change in the Rules and a mere letter cannot be taken into consideration and accordingly disposed of the Appeal on 31 August 2015.

3 The learned counsel for the Appellant has sought to place on record copy of the Rule 108 (7) (ii) of the Rules, 1960, which deals with requirements to be fulfilled for grant of licence, more particularly Clause (7) which has been amended and by virtue of Notification dated 19 January 2011 and according to him the condition of 75 mtrs. has

been excluded as far as the Video Game Parlours are concerned. The Learned Counsel for the Appellant contends that there is no longer a mere letter but the Rules themselves stand amended. The learned counsel for the Respondent-Plaintiff sought to contend that these Rules are not applicable to the city of Kolhapur as yet.

4 Be that as it may, since sole contentions advanced by the Learned counsel for the Appellant that the basis of the decision of the learned District Court does not survive, in view of change in the Rules, there is no impediment in the way of the Appellant to make a fresh application for grant of licence. It is obvious that the application made for grant of license will have to be considered on its own merits by the competent authority, as the learned District Judge decided the appeal on the basis of the legal position as it stood on that date. The learned counsel for the parties also accept this position. With this clarification, the Second Appeal is disposed of.

5 In view of dismissal of the Second Appeal, the Civil Application does not survive, the same is accordingly disposed off.

(N.M. Jamdar, J)