

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**FIRST APPEAL NO.1649 OF 2016
WITH
CIVIL APPLICATION NO.4718 OF 2016
IN
FIRST APPEAL NO.1649 OF 2016**

M/s. Ashwamedh Constructions & Anr. ...Appellants/Applicants

vs.

Shri. Keru Bhima Shinde ...Respondent

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Mr. Sandesh D. Patil, a.w Pawan S. Patil, i/b. Triyama Legal, for the Appellants.

Mr. Rajeshwar, for the Respondent.

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CORAM : S.C. GUPTE, J.

DATED : 17 APRIL 2017

P.C. :

. Heard learned Counsel for the parties.

2. The First Appeal is admitted and taken up for hearing forthwith by consent of parties. The appeal challenges a decree passed by the City Civil Court at Bombay in a suit filed by the Respondent (original Plaintiff). In the suit, the Plaintiff has sought specific performance of an agreement in his favour for allotment of a shop premises in an SRA project. This suit initially was filed in this Court in or about 2012. In pursuance of an interim application made before this Court, the Appellants (Original Defendants) were directed to deposit a sum of Rs.6 lakhs in this Court, which has since been deposited. The suit

was transferred to the City Civil Court at Bombay, upon change of jurisdiction. After it was so transferred to that Court, it is submitted by learned Counsel for the Appellants, the Appellants, through oversight, could not appear at the hearing of the suit and, as a result, the ex-parte decree came to be passed.

3. This position is contested by learned Counsel for the Respondent(Original Plaintiff). It is submitted that issues were framed in the suit as far back on 21 August 2014. Subsequently, the Plaintiff even filed his evidence. The Defendants were, thereupon, directed to file their documents in the suit. It is submitted that after framing of issues, throughout the Defendants remained absent. In the premises, it is submitted that the impugned decree was validly passed by the lower Court.

4. Considering the fact that the suit was originally contested before this Court after depositing the amount directed to be deposited by this Court and also considering the fact that the Appellants (Original Defendants) are also prepared to deposit the entire balance sum ordered by the Trial Court, pending hearing of the suit, in the peculiar facts and circumstances of the case, it is in the interest of justice to set aside the decree passed by the Trial Court and remit the matter back to the Trial Court for a fresh consideration in accordance with law.

5. In the premises, the following order is passed :-

(i) The First Appeal is allowed by setting aside the decree passed by the City Civil Court at Bombay on 30 September 2016;

(ii) The suit is remanded to the City Civil Court at Bombay for a fresh hearing in accordance with law;

(iii) The Appellants shall deposit a sum of Rs.5,95,000/- before the City Civil Court at Bombay, pending the hearing and final disposal of the suit, within a period of four weeks from today;

(iv) In the event of the Appellants failing to deposit this amount, the decree passed by this Court shall stand revived;

(v) The Appellants shall pay costs quantified at Rs.25,000/- to the Respondent;

(vi) The First Appeal is, accordingly, disposed of;

(vii) In view of the disposal of the First Appeal, the Civil Application does not survive and the same is also disposed of.

(S.C. GUPTE, J.)