

JPP

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

WRIT PETITION NO. 214 OF 2017

Mrs. Binaifer Batiwala alias Binafer Lovji Malegam. ... Petitioner.

V/s.

Kadambagiri Estates Pvt. Ltd.

... Respondent.

Mr. Y.S. Jahagirdar, Senior Advocate a/w. S.S. Kanetkar for the Petitioner.

Mr. D.J. Khambatta, Senior Advocate a/w. Naira Jeejeebhoy and Amit Mehta i/b. Mahimtura & Co. for the Respondent.

CORAM : N.M. Jamdar, J.

23 February, 2017.

Oral Order :-

Rule. Rule made returnable forthwith. By consent, taken up for disposal.

2. By this Writ Petition, the Petitioner has challenged the order passed by the learned District Judge, Pune dated 22 September 2016 whereby the judgment and decree passed by the learned Small Causes Court Judge, Pune on 5 December 2009 in Civil Suit No. 30 of 2002 was set aside and the suit filed by the Respondent was decreed.

3. A suit was filed by the Respondent seeking possession of the suit premises which is a bungalow situated at General Thimayya Road, Pune – 1, which is in possession of the Petitioner as tenant. The possession was sought on the ground that the Petitioner has committed breaches of terms of tenancy by carrying out unauthorized illegal permanent construction without permission as well as erected unauthorized extension and caused nuisance and noise. The suit was dismissed by the learned Small Causes Court Judge by the judgment and order dated 5 December 2009. An Appeal bearing No. 215 of 2010 was filed by the Respondent in the District Court, which has been allowed by the impugned order.

4. The learned Counsel for the Petitioner, inter-alia, contended that the reasoning given by the learned District Judge while setting aside the judgment and order passed by the learned Small Causes Court Judge and decreeing the suit, is totally unsatisfactory. The learned Counsel for the Respondent sought to support the ultimate conclusion of the learned District Judge.

5. In view of this position that there is no satisfactory reasoning in the impugned judgment, the learned Counsel for the Respondent had taken time. The matter was kept today. The learned Counsel for the Respondent, on instructions, states that the Respondent is not averse to set aside the judgment and decree passed

by the learned District Judge and to re-hear the appeal, provided the hearing of the appeal is made time bound. He also contended that the concession given by the Respondent should not be construed as reflection on the merits of the Appeal.

6. Therefore, the Writ Petition is disposed of by quashing and setting aside the order passed by the learned District Judge, Pune dated 22 September 2009 and restoring the Appeal No. 215 of 2010 filed by the Respondent in the District Court, Pune. The Appeal No. 215 of 2010 stands restored to file. So that the situation does not recur, the learned Principal District Judge will assign the Appeal to some other learned District Judge

7. Considering the fact that the remand of Appeal is necessitated in the above circumstances, the learned District Judge to whom the Appeal is assigned, will decide the Appeal within period of six months from the date the Appeal is assigned.

8. The Registry to communicate the order forthwith.

9. All contentions of the parties on merits are kept open.

10. The Writ Petition is disposed of in above terms.

(N.M. Jamdar, J.)