

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 33 OF 2015
WITH
CIVIL APPLICATION NO. 42 OF 2015

Bharat Keshavji Nishar .. Appellant
VS.
Mahendra Gaikwad & Anr. .. Respondents

None for Appellant.

Ms Triveni Jani with Mr. Ankur Kalal i/b. Markand Gandhi & Co.
for Respondent No. 2.

CORAM : M. S. SONAK, J.
DATE: 08 FEBRUARY 2017

P.C :

1] On 1 February 2017, this court made the following order:

"1] Neither the appellant nor his Advocates are present. Ms Jani, learned counsel for respondent no. 2 submits that this was a suit between the licensor and a licensee and therefore, the same was not maintainable before the civil court. In these circumstances, there is no reason to interfere with the impugned order which has merely directed the return of the plaint for presentation before the appropriate court, which in the present case, would be the Small Causes Court. This submission is premised upon the provisions contained in section 41 of the Presidency Small Causes Court Act 1882.

2] With a view to afford the appellant yet another opportunity, place the matter on 8 February 2017 on S.B. If on this date, neither the appellant nor his Advocate remain present, the appeal may have to be disposed of for non prosecution or upon examination of the aforesaid submission raised by Ms Jani."

2] Today, again, when the matter is called out, neither the appellant nor his Advocates are present. Ms Jani, appears for respondent no. 2. In furtherance of submissions made by her on 1

February 2017, she placed reliance upon the decision of the Full Bench of this Court in the case of ***Prabhudas Damodar Kotecha & Ors. vs. Manhabala Jeram Damodar & Anr.***¹ and the decision of the Hon'ble Supreme Court confirming the view taken by the Full Bench of this Court reported in ***2013 (6) All MR 399 (S.C.)***. In these decisions, it is held that the expression 'licensee' in section 41(1) of the Presidency Small Causes Court Act 1882 is a term of wider import intended to include a gratuitous licensee as well.

3] Applying the law laid down in the aforesaid decisions, there is really no case made out to interfere with the impugned order. The trial Judge has basically held that the respondent no. 1 was a gratuitous licensee in respect of the suit premises and therefore, a suit, seeking his eviction, was not maintainable before the civil court, the proper forum being the Small Causes Court in terms of section 41 of the said Act. Accordingly, the plaint was ordered to be returned to the plaintiff for presentation before the appropriate court. There is really no case made out to interfere with the impugned order except that a period for return of the plaint is extended upto 31 March 2017. In any case, by virtue of the impugned order, there can never be any bar to the appellant instituting fresh proceedings before the Small Causes Court for seeking the same relief. Such suit, if instituted, will obviously have to be decided in accordance with law and on its own merits.

4] With the aforesaid observations, this appeal is disposed of. There shall be no order as to costs. In view of disposal of appeal, civil application does not survive and is disposed of accordingly.

Chandka

(M. S. SONAK, J.)

¹ 2007 (4) All MR 651