

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 37 OF 3017

Central Cottage Industries Association
and Another

..Applicants

Vs.

Messrs. MIC Products and Others

..Respondents

Mr. Ranjeet Thorat, Senior Advocate a/w Meghna Gowalani i/b
Ganesh K. Gole, for the Applicants.

Mr. G. S. Godbole i/b Nilesh Tribhuvann, for the Respondents.

CORAM :- B. P. COLABAWALLA, J.

DATE :- JULY 13, 2017.

P. C.:

This Civil Revision Application challenges the order dated 30th September, 2016 passed by the Appellate Bench of the Small Causes Court, Mumbai in Appeal No.37 of 2008.

2 Very few facts need to be noted to dispose of the Civil Revision Application. The Respondents herein were the Original Plaintiffs in R. A. E. Suit No.1086/3597/84. This Suit was filed for eviction of the Applicants herein on various grounds including one of bonafide requirement under Section 13 (1) (g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. This

Suit came to be dismissed by the Trial Court vide its judgment and order dated 22nd December, 2006. Being aggrieved by this order, the Respondents herein preferred an Appeal before the Appellate Bench of the Small Causes Court, Mumbai being Appeal No.37 of 2008. The Appellate Bench by its order dated 7th August, 2015 partly allowed the Appeal and basically held in favour of the Plaintiffs on the issue of bonafide requirement and comparative hardship. On other grounds, the Appellate Bench agreed with the Trial Court. Being dissatisfied with this order of the Appellate Bench, the Applicants herein approached this Court in its civil revisional jurisdiction under Section 115 of the Code of Civil Procedure, 1908 by filing Civil Revision Application No.566 of 2015. This Civil Revision Application was disposed of by consent of parties by order dated 15th June, 2016. Paragraphs 7 and 8 of this order read thus:-

“7. During the course of hearing and in particular having regard to paragraph-11 of the cross-examination of PW-1 Ramlal Narang as also paragraph-36 of the evidence of DW-1 Tirath Singh Payara Singh, I indicated Mr. Naik that the appellate Court has not properly considered availability or otherwise of other premises to the plaintiffs for starting their business. Upon taking instructions from respondent No.3 Ramlal Sevaram Narang who is present in Court, he consents for setting aside the

impugned order. He submitted that as the suit is instituted in the year 1984, the Appellate Court may be directed to dispose of the appeal in a time bound manner.

8. In view thereof, by consent of the parties, the impugned order is set aside and the appeal is restored to the file of the Appellate Court. The Appellate Court will consider the contentions recorded in this order and any other contentions that are available to the parties. In particular, the appellate Court will consider availability or otherwise of other premises to the plaintiffs. The parties agree that they will appear before the Appellate Court on 30.6.2016 and for that purpose no fresh notice be issued to them. Hence, the following order :

(i) By consent, the impugned order is set aside and the appeal is restored to the file of the Appellate Court. The parties shall appear before the Appellate Court on 30.6.2016 and for that purpose no fresh notice be issued to them.

(ii) The Appellate Court will consider the contentions of the parties recorded in this order and any other contentions that are available to them and decide the appeal within a period of three months from the date of appearance of the parties. All contentions of the parties are expressly kept open.

(iii) Rule is made absolute in aforesaid terms with no order as to costs. Order accordingly.”

3 After this order, the Appellate Bench of the Small Causes Court once again heard the matter and at paragraph 4

opined that the remand by the High Court was only restricted to the issue of hardship and thereafter proceeded to hear the parties and once again confirmed the earlier findings. When I heard this matter for admission, I was inclined to admit the same considering that the arguable questions were raised. However, Mr. Godbole, the learned counsel appearing on behalf of the Respondents submitted that if I was of the opinion that the remand order was not limited only to comparative hardship but was a complete order of remand where all issues were to be raised, argued and considered, I ought to set aside the impugned order dated 30th September, 2016 and direct the Appellate Bench of the Small Causes Court at Mumbai to hear Appeal No.37 of 2008 on all issues and independently decide the same uninfluenced by any observations made by the earlier Appellate Bench.

4 In view of this concession made by Mr. Godbole [on instructions of his client (Respondent No.2) who is present in Court], I pass the following order:-

- (i) The impugned order dated 30th September, 2016 is hereby quashed and set aside and Appeal No. 37 of 2008 is restored to the file of the Appellate Court to be heard on merits and in

accordance with law.

- (ii) The Appellate Court will consider all contentions raised by both parties and it is made explicitly clear that this order of remand is not limited to any one issue. Both parties are at liberty to raise all issues before the Appellate Court which it shall consider and decide in accordance with law.
- (iii) If any party wishes to lead any additional evidence before the Appellate Court, they are free to make necessary applications in that behalf and the Appellate Court will consider the same on its own merits uninfluenced by any observations made in this order.
- (iv) Considering that the Suit has been filed as far back as in 1984 and the Appeal itself is of the year 2008, the Appellate Court is requested to dispose of the aforesaid Appeal within a period of nine months from today.

4 Civil Revision Application is disposed of in the aforesaid terms.

(B. P. COLABAWALLA, J.)