

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.86 OF 2018

Lakhan B. Mandhyan & Ors.	 Applicants
V/s.	
Jagdish C. Purshotamani & Ors.	 Respondents

Mr. Simil Purohit, a/w. Mr. Gauraj Shah and Mr. Manish Doshi, for the Applicants.

Mr. Yatin R. Shah for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 12TH MARCH 2018.

P.C. :

1. Heard Mr. Purohit, learned counsel for the Applicants, and Mr. Shah, learned counsel for the Respondents.

2. By this Revision Application, filed under Section 115 of the Code of Civil Procedure, 1908, the Applicants are challenging the order dated 22nd September 2017 passed by the 3rd Joint Civil Judge, Junior Division and Judicial Magistrate, First Class, Ulhasnagar, below the application “Exhibit-93” in Regular Civil Suit No.218 of 2012.

3. This application at “Exhibit-93” was filed by the present

Applicants, who are the Defendants before the Trial Court, for dismissal of the Suit, on admission, under Order 12 Rule 6 of the CPC, and/or for striking of pleadings in the plaint, under Order 6 Rule 16 r/w. Section 151 of CPC.

4. The contention raised by the Applicants is that, the Respondents-Plaintiffs had previously filed Regular Civil Suit No.30 of 2004 for declaration and injunction and for staying the order of illegal demolition dated 18th August 2003. In the said Suit, Respondents have stated that, when Defendant-Municipal Corporation came to know about the filing of the Suit, the Municipal Corporation demolished the suit property illegally and the said demolition continued on the next day also. As a result, the total construction was demolished. Thereafter, the said Suit came to be dismissed. The Appeal against dismissal of the said Suit also came to be dismissed and the said decision is confirmed upto this Court. Hence, it is urged that, now the present Suit, which is filed by the Respondents for getting damages as compensation for illegal demolition of the construction, is not tenable. If on the own showing of the Respondents, the Suit came to be dismissed on merits, then, further cause of action does not lie for seeking damages as compensation for illegal demolition of the suit structures.

5. However, as rightly held by the Trial Court, the earlier Suit was for

declaring that the notice issued by the Respondent-Municipal Corporation about the illegal construction was not correct. During the pendency of that Suit, it may be true that, the entire construction was demolished and then the Suit also came to be dismissed. However, as held and as observed by the Trial Court, the Suit and the Appeal came to be dismissed for want of notice issued under Section 487 of the B.P.M.C. Act and, secondly, the cause of action and the relief claimed in the present Suit is also totally different. Merely because the earlier Suit came to be dismissed, the present Suit cannot be said to be barred either under Order 2 Rule 2 of CPC or even under Order 12 Rule 6 of CPC.

6. In view of the above, no ground is made out to allow such application. Hence, this Revision Application stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]