

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition (ST) NO. 4066 OF 2018

Mrs. Carmin Peter Saldana
And Anr.

...Petitioners

Versus

Smt. Anandi Wd/o. Vishanath Banjan

...Respondent

....

Mr. Ashish Dubey, Advocate for the Petitioners.

Mr. Anand Singh, Advocate for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 20th MARCH, 2018

P.C.

1. Heard Mr.Ashish Dubey, learned counsel for the petitioners and Mr.Anand Singh, learned counsel for the respondent, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the judgment and order dated 5.12.2017 passed by the Appellate Bench of the Small Causes Court, Bandra in Revision Application No.130/2016. By that order, the Appellate Court dismissed the Revision Application and maintained the order dated 8.8.2016 passed by the learned Judge, Court Room No.33 of the Small Causes Court at Mumbai, Bandra Branch below Exhibit-34 in R.A.E. & R. Suit No.526/794 of 2011. By these orders, the Courts below rejected the application made by defendant No.2 seeking

direction against the respondent/plaintiff to carry out necessary and essential tenantable repairs as set out in paragraphs-13(a) to 13(g) of the application in respect of the suit premises and as per the report dated 25.5.2015 of the architect Mr. I.K. Charolia, amongst other reliefs.

3. Rule. Mr. Singh waives service. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. In support of this Petition, Mr. Dubey has invited my attention to the order dated 17.2.2017 passed by the Appellate Court below Exhibit-8 in Revision Application No.130/2016. By that order, the Appellate Court permitted the respondent/plaintiff to inspect the suit premises in the presence of the defendants with the help of an Architect. The Architect was ordered to be appointed with the consent of both the parties. Both the parties were directed to bear the expenses of the Architect. The plaintiff was directed to submit the report of the Architect / inspection report within 15 days and the matter was adjourned for further arguments till receipt of the inspection report.

5. Mr.Dubey submitted that in pursuance thereof, H.G. Samant & Associates submitted inspection report on 24.3.2017 along with photographs. While rejecting the application, the Appellate Court did

not advert to the said report. He, therefore, submitted that the impugned order deserves to be set aside thereby restoring the Revision Application before the Appellate Court.

6. On the other hand, Mr. Singh submitted that though the report is submitted by the Architects M/s. H.G. Samant & Associates, he has not suggested the repairs to be carried out in the suit premises.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. A perusal of the impugned order passed by the Appellate Court rejecting the Revision Application shows that the Appellate Court did not consider the report submitted by the Architect. In fact, said report is not referred in the impugned order. On this short count alone the impugned order deserves to be set aside restoring the Revision Application to its original position. It is also necessary to direct the Appellate Court to consider Revision Application *denovo* in the light of the report dated 24.3.2017 submitted by H.G. Samant & Associates, Architects. Hence the following order :

:: O R D E R ::

- [i] The order dated 5.12.2017 passed by the Appellate Bench of the Small Causes Court, Bandra in Revision Application

No.130/2016 is set aside. Revision Application No.130/2016 is restored to the file of Appellate Court.

- [ii] The Appellate Court shall decide the Revision Application No.130/2016 afresh by taking into consideration the report dated 24.3.2017 submitted by H.G. Samant & Associates, Architects. Revision Application shall be decided within four weeks from production of an authenticated copy of of this order.
- [iii] All contentions of the parties on merits are expressly kept open.
- [iv] Rule is made absolute in aforesaid terms with no order as to costs.
- [v] All concerned parties, including the Appellate Court, to act upon an authenticated copy of this order. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)