

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.232 OF 2018

Quency Ralph Miranda ... Applicant
Vs.
Salauddin Ansari ... Respondent

Ms Eventa A. Gonsalves for Applicant.

CORAM : R. G. KETKAR, J.
DATE : AUGUST 13, 2018

P.C. :

Heard Ms Gonsalves, learned Counsel for the applicant at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicant, hereinafter referred to as 'decree-holder', has challenged the judgment and decree dated 30.01.2017 passed by the learned Judge, Court Room No.35 of the Court of Small Causes at Mumbai (Bandra Branch) in R.A.E.Suit No.583/1083 of 2010 as also the judgment and decree dated 06.01.2018 passed by the Appellate Bench of the Court of Small Causes at Mumbai (Bandra Branch) in 2(a) Appeal No.63 of 2017. By these orders, the Courts below dismissed the Suit instituted by the decree-holder for recovery of possession of the suit premises namely, one room admeasuring 190 sq.ft. on the ground floor of Elias Gomes House situate at C.T.S.No.404, Sahar Vilage, Tank Pakhade, P.O. Vile Parle (East), Mumbai 400 099. The decree-holder had instituted Suit inter alia on the ground that respondent, hereinafter referred to as 'defendant', has committed breach of the consent terms dated 03.05.2007 entered into by and between the parties herein in R.A.E.&R. Suit No.123 of 2007 and therefore, for possession of the suit premises.

3. It is the case of the decree-holder that defendant herein, who was defendant No.2 in R.A.E.&R. Suit No.123 of 2007 had agreed to pay monthly rent of Rs.300/- only, exclusive of future permitted increases and water charges. The defendant agreed and undertook to pay a sum of Rs.80,000/- towards cost of repairs without claiming any adjustment. The amount of Rs.80,000/- was to be paid within a period of 12 months i.e. on or before 23.04.2008, and initially by monthly installment of Rs.5,000/- each, commencing from 15.05.2007 and the last installment was to be made on or before 23.04.2008. By order dated 30.01.2017, the learned trial Judge dismissed the Suit by holding that defendant proved that he has made payment of Rs.80,000/- to the decree-holder. As against this, the Appellate Court dismissed the Suit on the ground that in view of Section 47 of C.P.C., Suit, itself, is not maintainable.

4. After arguing the Application for quite some time, Ms Gonsalves seeks permission to withdraw the Application with liberty to file execution proceedings for execution of the decree passed in R.A.E.&R. Suit No.123 of 2007. She further submitted that if the execution proceedings are filed, it may be clarified that the same may be decided uninfluenced by the observations made in the impugned orders.

5. In view thereof, on the motion made by Ms Gonsalves, Application is allowed to be withdrawn with liberty as prayed for. If the execution proceedings are filed, the Court, seized of the execution proceedings, shall decide the same uninfluenced by the observations made in the impugned orders. All contentions of the parties on merits in that regard are expressly kept open. Order accordingly.

(R. G. KETKAR, J.)