

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 5494 OF 2016

Jaibhavani Mess
and Ors

...Petitioners

Versus

Sau. Aparna Shishir Gandhi

...Respondent

....

Mr. Nitin P. Dalvi, Advocate for the Petitioners.

Mr. S. M. Kazi i/b. Anoop Sharma, Advocate for Respondent No.1.

....

CORAM : R. G. KETKAR, J.

DATE : 08th MARCH, 2018

P.C.

1. Heard Mr.Nitin P. Dalvi, learned counsel for the petitioners and Mr.S.M. Kazi, learned counsel for the respondent No.1, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the judgment and decree dated 17.3.2016 passed by the learned Principal District Judge, Solapur in Regular Civil Appeal No.279/2002. By that order, the learned Principal District Judge partly allowed the appeal and quashed and set aside the judgment and decree dated 30.4.2002 passed by the learned Jt. Civil Judge, Junior Division, Solapur in R.C.S. No.858/1992 and directed the petitioners/defendants to hand over vacant possession of the suit

premises, more particularly described in para-1A of the plaint, to the plaintiff within a period of three months from the date of the order.

3. Leave to convert Writ Petition into C.R.A. is granted. Amendment shall be carried out within one week and office to renumber the petition as C.R.A.

4. Rule. Learned Counsel for respondent No.1 waives service. As respondent No.1/orig. Plaintiff is the contesting respondent, notice on respondents No.2 and 3 is dispensed with. 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.

5. A perusal of the impugned order and in particular paragraph-19 onwards shows that the learned Principal District Judge has not considered the availability of other premises to the plaintiff. In view thereof, the impugned order cannot be sustained.

6. Mr.Kazi states that Mr. Adityavikram Shishir Gandhi, son of respondent No.1 is present in the Court. He has tendered a photocopy of his Aadhaar card, which is taken on record and marked 'X' for identification. Upon taking instructions from him, Mr. Kazi states that by consent of the first respondent, the impugned order passed by the

learned Principal District Judge may be set aside and the appeal may be restored to its original position. He states that as the appeal is of the year 2002, the Appellate Court may be directed to dispose of the appeal in a time bound manner.

7. In view thereof, the impugned order dated 17.3.2016 passed by the learned Principal District Judge is set aside. Regular Civil Appeal No.279/2002 is restored to the file of the learned Principal District Judge. The parties shall appear before the learned Principal District Judge on 19.3.2018 and for that purpose no fresh notice be issued to them. The learned Principal District Judge will allot the appeal to appropriate Court which will decide the appeal within six weeks from the date of appearance of the parties. All contentions of the parties are kept open. The learned District Judge will decide the appeal on the basis of evidence on record and in accordance with law uninfluenced by the observations made in this order. Rule is made absolute in aforesaid terms with no order as to costs. Civil Revision Application is disposed of. In view of disposal of main C.R.A., Civil Application (St.) No.12627/2016 does not survive and the same is also disposed of. Order accordingly.

(R. G. KETKAR, J.)