

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 4087 OF 2018

Lilawati @ Lilaben Jagjivan
Makwana

...Petitioner

Versus

Om Datt Sahakari Gruhnirman Sansatha
And Ors.

...Respondents

....

Mr. Ashok Kumar Mishra, Advocate for the Petitioner.

....

CORAM : R. G. KETKAR, J.

DATE : 04th APRIL, 2018

PC.

1. Not on board. At the request of Mr.Mishra taken up for admission.
2. Heard Mr.Ashok Kumar Mishra, learned counsel for the petitioner, at length.
3. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 7.5.2014 passed by the learned Judge, Court Room No.32 of the Court of Small Causes Court at Mumbai (Bandra Branch) in Marji Application No.181/2013 as also the judgment and order dated 11.1.2018 passed

by the Appellate Bench of the Small Causes Court at Mumbai in Misc. Appeal No.35/2014. By these orders, the Courts below have dismissed Marji application No.181/2013 taken out by the petitioner, hereinafter referred to as the 'plaintiff', alleging breach of the order dated 6.8.2011.

4. Mr. Mishra submitted that by order dated 6.8.2011 below Exhibit-8 in R.A.D. Suit No.564 of 2009, the learned trial Judge restrained defendants No.1 to 3 and 5 from demolishing room No.16, Dayabhai Tamakuwala Chawl, N.L. Road, Somwari Bazar, Malad (W), Mumbai – 400 064 (for short, 'suit premises') till the decision of the suit. He submitted that defendant No.3 is brother-in-law of the plaintiff. Defendant No.3 in collusion with defendant No.2 M/s. Solitare Construction highhandedly and unlawfully and in disregard of the order dated 6.8.2011 demolished the suit premises. The plaintiff came to know about this fact on 17.6.2013 when the Advocate for defendant No.2 told her Advocate that the structure has collapsed in the heavy rains. He submitted that defendants No.2 and 3 have demolished the suit premises and thus have violated the order dated 6.8.2011. He submitted that defendants No.2 and 3 did not report the demolition of the suit premises to the Fire Department of the Corporation. He has invited my attention to the panchnama dated 16.6.2013 which substantiates the case of the plaintiff that defendants No.2 and 3 have

demolished the suit premises.

5. He invited my attention to paragraph-17 of the trial Court's judgment where the trial Court recorded that the plaintiff and the defendant filed praecipe that they do not want to lead any evidence and the plaintiff wants to argue the matter on the basis of the pleadings and the documents produced on record. He submitted that the Advocate for the plaintiff committed mistake in filing that praecipe. He submitted that the impugned orders may be set aside and the Marji application may be restored so as to enable the plaintiff to adduce evidence to substantiate disobedience of respondents No.2 and 3. He submitted that in the interest of justice, the matter requires to be remanded to the trial Court.

6. I have considered the submissions of Mr. Mishra. I have also perused the material on record. Mr. Mishra submitted that defendants No.2 and 3 admitted that the plaintiff demolished the suit premises. He however was not in a position to establish the admission of defendants No.2 and 3 to that effect. On the contrary, perusal of their reply shows that they have denied the contentions raised by the plaintiff that defendant No.2 demolished the suit premises. In paragraph-4(c), defendant No.2 denied the contentions raised by the plaintiff in

paragraph-3 of the Marji application that defendants No.2 and 3 have demolished the suit premises. In paragraph-4(d), defendant No.2 contended that they have not committed any contempt as alleged in the contempt notice. The walls of the suit premises were softened and loosened due to the heavy rains and collapsed and it was a clear case of natural calamity caused due to heavy rains in monsoon which started early in the month of June. Defendant No.2 had approached the police station after the natural calamity and reported the matter. In pursuance thereof, panchanama was prepared which was annexed at Exhibit-2 collectively.

7. A perusal of the trial Court's order and in particular paragraph-17 shows that the learned trial Judge observed that no evidence was adduced by the plaintiff. On the other hand, the plaintiff and the defendant have filed praecipe that they did not want to lead any evidence and the plaintiff wanted to argue the matter on the basis of pleading and the documents produced on record. Thus it was the decision of the plaintiff not to lead evidence to substantiate her case that defendants No.2 and 3 have demolished the suit premises.

8. In paragraph-8, the appellate Court has considered this aspect and observed that merely on the basis of bare words of the plaintiff and

photographs, inference cannot be drawn to the effect that defendants No.2 and 3 had demolished the suit premises. The plaintiff had not led any evidence in support of her contention. When defendants No.2 and 3 were denying that they had demolished the suit premises, it was necessary for the plaintiff to produce strict evidence about the demolition of the suit premises by the defendants. In order to hold the defendants guilty for alleged contempt, strict proof is required. No evidence was adduced by the plaintiff. Defendants No.2 and 3 cannot be held responsible for the contempt. Thus the Courts below after considering the material on record as also the fact that the plaintiff did not adduce any evidence, dismissed the Marji Application. In view thereof, I do not find that the Courts below committed any error. No case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Deshmane (PS)