

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.231 OF 2018
WITH
CIVIL APPLICATION NO.483 OF 2017
IN
CIVIL REVISION APPLICATION (ST.) NO.34557 OF 2017

Vaishnavi V. Mahadik widow of Vishwanath Kashinath
(Dadasaheb) Mahadik and another ... Applicants

In the matter between
Vaishnavi V. Mahadik widow of Vishwanath Kashinath
(Dadasaheb) Mahadik and another ... Applicants
Vs.
Ramabai Bhiva Bhoir and others ... Respondents

Ms Gaurangi Patil i/b. Mr. Prasad Apte for Applicants.
Mr. S. R. Ganbavale for Respondents.

CORAM : R. G. KETKAR, J.
DATE : APRIL 9, 2018

P.C. :

Not on Board. At the request of Ms Patil, taken up for admission.

2. Heard Ms Patil, learned Counsel for applicants and Mr. Ganbavale, learned Counsel for respondents.

3. By Civil Application No.483 of 2017, applicants have prayed for condoning the delay of 400 days in filing the present C.R.A. By Civil Application No.231 of 2018, applicants have prayed for stay of further proceedings of Marji Application No.163 of 2017 filed by the respondent before the Appellate Bench of the Small Causes Court and have further prayed for allowing the Marji Application on the condition that respondent will furnish Bank Guarantee of the exact amount deposited along with the accrued interest if any with the Small Causes

Court and also file undertaking for repaying the amount withdrawn by the respondent pending the final disposal of the present C.R.A.

4. As far as Civil Application No.483 of 2017 is concerned, though no sufficient cause is made out for condoning the delay of 400 days, in the ends of justice, delay is condoned and Civil Application is allowed in terms of prayer clause (a) with no order as to costs.

5. C.R.A.(St.) No.34557 of 2017 takes exception to the judgment and decree dated 08.11.2012 passed by the learned Judge, Court Room No.10 of the Court of Small Causes at Mumbai in R.A.E. Suit No.2007 of 2008. In paragraph 19 of the C.R.A., reference is made to the order dated 18.02.2015 passed by the Appellate Bench of the Small Causes Court in (A1) Appeal No.8 of 2013 and filing of the certified copy in C.R.A.No.207 of 2015. As the Appeal preferred by Vishwanath Mahadik, since deceased (defendant No.1) against the judgment and decree dated 08.11.2012 is dismissed, leave to amend C.R.A. so as to challenge order dated 18.02.2015 is granted. Amendment shall be carried out forthwith.

6. By this C.R.A., applicants - heirs of original defendant No.1 have challenged the judgment and decree dated 08.11.2012 passed by the trial Court (referred hereinabove) as also the judgment and decree dated 18.02.2015 passed by the Appellate Bench of the Small Causes Court in Appeal No.8 of 2013 in R.A.E.Suit No.2007 of 2008. Mr. Ganbavale has raised preliminary objection as regards the maintainability of this C.R.A. on the ground that applicants had instituted C.R.A.No.580 of 2017 challenging the very orders passed by the trial Court and the Appellate Court and said C.R.A. was dismissed as withdrawn. He, therefore, submitted that present Application is not maintainable.

7. On the other hand, Ms Patil invited my attention to paragraph 3 of the order dated 14.11.2017 which gives liberty to prosecute the remedies, if any, in accordance with law. She submitted that there was confusion at the time of arguing the C.R.A.No.580 of 2017, and therefore, that C.R.A. was withdrawn and this Court granted liberty to the applicants to pursue their remedies, if any, in accordance with law and therefore, it cannot be said that the present Application is not maintainable.

8. I do not find any merit in this submission. It is not in dispute that applicants had instituted C.R.A.No.580 of 2017 in this Court challenging the order dated 18.02.2015 passed by the trial Court as also the order dated 11.04.2017 passed by the Appellate Bench of the Small Causes Court in Revision Application No.22 of 2016. Thus, though the applicants challenge the order dated 18.02.2015 passed by the Appellate Court, they withdrew the Application and the Application was dismissed as withdrawn. In view thereof, I do not find merit in the submission of Mr. Ganbavale that present C.R.A., itself, is not maintainable. C.R.A. is, therefore, dismissed as not maintainable. In view of the dismissal of the C.R.A., Civil Application No.231 of 2018 seeking direction does not survive and the same is disposed of as such.

(R. G. KETKAR, J.)

Minal Parab