

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION (ST.) NO.11587 OF 2018

Madhukar Anaji Patil and another ... Applicants

Vs.

Lata Digambar Narvekar and others ... Respondents

Mr. Tushar Dahibawkar i/b. Dahibawkar & Co. for Applicants.

Mr. Kishor S. Patil for Respondents.

CORAM : R. G. KETKAR, J.

DATE : APRIL 17, 2018

P.C. :

Heard Mr. Dahibawkar, learned Counsel for the applicants and Mr. Patil, learned Counsel for the respondents.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicants have challenged the judgment and decree dated 03.02.2018 passed by the Appellate Bench of the Small Causes Court at Mumbai in P - Appeal No.1 of 2012. By that order, the Appellate Court partly allowed the Appeal and quashed and set aside the judgment and decree dated 12.08.2011 passed by the learned Judge, Court Room No.8 of the Court of Small Causes at Mumbai in L.E.&C.Suit No.37/43 of 2008. The Appellate Court decreed the Suit instituted by the respondents-plaintiffs and directed the defendants to handover vacant and peaceful possession of the alternate accommodation allotted to them in lieu of the hut or any other benefits accrued due to acquisition of hut for road widening to the plaintiffs.

3. The matter was heard on 16.04.2018. During the course of hearing, Mr. Dahibawkar submitted that defendants have agitated the point based on the definition of the expression "occupier" in Section 2(25) of the Maharashtra Housing and Area Development Act, 1976 (for

short 'Act') read with Regulation 33(15) of the Development Control Regulations for Greater Bombay, 1991. However, the said contention was not dealt by the Appellate Court.

4. Mr. Dahibawkar further states that applicant No.2 - Megha M. Patil is present in the Court. He has tendered photocopy of her PAN Card, which is taken on record and marked 'X' for identification. He further states that he has explained to her the proposed action of withdrawing this C.R.A. and filing Review Petition before the Appellate Court and she has understood the same.

5. Mr. Patil objects to withdrawal of C.R.A. with liberty to file Review Petition and submits that in case the Court is permitting the applicants to file Review Petition, all contentions of the respondents may be kept open.

6. In view thereof, on the motion made by Mr. Dahibawkar, C.R.A. is allowed to be withdrawn with liberty to file Review Petition before the Appellate Court on the ground that the contention referred hereinabove was not dealt with. All contentions of the respondents, including maintainability of such Review Petition, are expressly kept open. It is made clear that I have not examined the merits of the case. Petition is disposed of accordingly.

(R. G. KETKAR, J.)

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