

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 5695 OF 2014

Shri Yogesh Madhukar Jhagde
And Ors.

...Petitioners

Versus

Smt. Aarati Kishan Jha

...Respondent

....

Ms. Sunita Sonawane, Advocate for the Petitioners.

Mr. Shriram Redij i/b. Mr.G.P. Prabhu, Advocate for the Respondent.

Mr. Milind Madhukar Zagade, petitioner No.4 is present in person.

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CORAM : R. G. KETKAR, J.

DATE : 24th APRIL, 2018

PC.

1. Heard Ms.Sunita Sonawane, learned counsel for the petitioners and Mr.Shriraj Redij, learned counsel for the respondent, at length.

2. Leave to amend so as to challenge the judgment and decree dated 3.5.2011 passed by the learned Judge, Court Room No.33 of the Court of Small Causes at Bombay, Bandra Branch in R.A.E. Suit No.387/2006 is granted. Amendment shall be carried out forthwith.

3. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as the 'defendants', have

challenged the judgment and decree dated 3.5.2011 passed by the learned Judge, Court Room No.33 of the Court of Small Causes at Bombay, Bandra Branch in R.A.E. Suit No.387/2006 as also the judgment and decree dated 10.4.2014 passed by the Appellate Bench of the Small Causes Court at Bandra, Mumbai in Appeal (A-1) No.77/2011. By order dated 3.5.2011, the learned trial Judge decreed the suit only under Section 16(1)(g) and declined to pass decree under Sections 16(1)(a), 16(1)(b), 16(1)(c) and 16(1)(n) of the Maharashtra Rent Control Act, 1999 (for short, 'Act') and directed the defendants to hand over vacant and peaceful possession of the suit premises, namely, behind room No.1 of the suit property known as Aarti Niwas, situate at Bandrekar Wadi, Jogeshwari (East), Mumbai – 400 060 (for short, 'Suit premises') to the respondent, hereinafter referred to as the 'plaintiff', within three months from the date of the order. By order dated 10.4.2014, the Appellate Court dismissed the appeal. The Courts below held that the suit premises is not situate in a Slum Area as contemplated by the Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971.

4. The matter was heard at length on 17.4.2018 and was adjourned till today for passing orders.

5. Ms. Sonawane states that petitioner No.4 Milind Madhukar Zagade is present in the Court. She has tendered a photo-copy of his PAN card, which is taken on record and marked 'X' for identification. Upon taking instructions from him, she seeks permission to withdraw this Petition with liberty to file Review Petition before the Appellate Court. Mr. Redij submits that in case such liberty is granted, all contentions of the plaintiff in that regard may be kept open.

6. In view thereof, on the motion made by Ms. Sonawane, the Petition is allowed to be withdrawn with liberty as prayed for and is disposed of as such. Grant of liberty shall not be construed as an expression of opinion on merits of either side. All contentions of the parties are expressly kept open.

7. The plaintiff is permitted to withdraw the amount deposited by the defendants in the Small Causes Court, unconditionally.

8. All concerned parties, including the Small Causes Court, to act upon the authenticated copy of this order. Order accordingly.

(R. G. KETKAR, J.)