

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13722 OF 2018

Jayashree Khetmal Bafna and Anr. ...Petitioners
vs.
Govind Bhausahab Kadam ...Respondent

Mr. Vilas Tapkir, for the Petitioners

CORAM : M. S. SONAK, J.

DATE : DECEMBER 10, 2018

P.C.:

. Heard Mr. Tapkir, learned counsel for the Petitioners.

2. The challenge in this Petition is to the order dated 18th April, 2018 by which the learned Family Court has dismissed the Petitioner's application (Exhibit 16) seeking for appointment of Nazir, District Court as a Guardian in respect of the suit premises.

3. Mr. Tapkir submits that the Appeal Court was required to go into the issue as to whether the Respondent had indeed and legitimately inheriting the tenancy rights in respect to the suit premises. He submits that the Appeal Court has not occasion to look into this issue but merely postponed it for consideration at the stage of final hearing of the Appeal. He submits that this is

improper and also contrary to the direction issued by this Court in 12th January, 2017 while disposing of Writ Petition No. 13368 of 2016 instituted by the Respondent- Govind Kadam. On this particular ground, Mr. Tapkir submits that the impugned order is required to be set aside and the Petitioner's application (Exhibit 16) allowed.

4. The record indicates that earlier, the Petitioner's application (Exhibit 16) was in fact allowed by the Appeal Court vide order dated 3rd October, 2016. As regards the same, the Respondent instituted Writ Petition No. 13368 of 2016 which was disposed of by an order dated 12th January, 2017, the operative portion of the order dated 12th January, 2017 reads thus:

(i) The judgment and order passed below Exh 16 in Civil Appeal No. 299 of 2010 is quashed and set aside.

(ii) The Respondent -Appellant will bring the Petitioner on record as a Respondent subject to the rights and contentions of the Respondent regarding the entitlement of the Respondent to contest the Appeal.

(iii) It will be open to both the parties to advance such submission or place such materials or evidence, as may be required, for adjudication of the above aspects.

5. From the aforesaid it is quite clear that the Petitioners were required to bring the Respondent on record that subject to rights and contentions of the Petitioner regarding the entitlement of the Respondent to contest the Appeal.

6. Taking into consideration the order dated 12th January, 2017, the order of the Appeal Court in refusing once again appointment of Nazir of the District Court as a Guardian of the suit premises cannot be forfeited. The Appeal Court has made it clear that merely because the Respondent Govind Kadam is brought on record that does not mean that his right and entitlement has been recognized. The Appeal Court has made it clear that the evidence to be placed on record by the Petitioner as well as Respondent, will be taken into consideration at the stage of adjudication of the Appeal. After making this observation, the Appeal has been adjudicated for the final argument.

7. For all the aforesaid reasons, the contention of the Petitioner that the Respondent Govind Kadam has no rights in the suit premises or that he has not inherited the right in the suit premises is kept expressly open for the adjudication in accordance with material and evidence as may be produced by both the parties and as may be required for adjudication of this aspect. Thus construed, the impugned order is quite consistent with the direction issued by this Court in the order dated 12th January, 2017. It is once again clarified that the issue as regards the entitlement of the Respondent are kept open and the same will have to be decided at the stage of adjudication of the Appeal finally.

8. There is no necessity to interfere with the impugned order.

9. There shall be no order as to cost as well.

10. The Petition is disposed of in the aforesaid terms.

(M. S. SONAK, J.)