

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9768 OF 2018

Johnson Dye Works Private Limited ... Petitioner
Vs.
Daksha Keshrichand Jhaveri and others ... Respondents

Dr. Virendra Tulzapurkar, Senior Advocate a/w. Ms Saumiya Srikrishna i/b.
Khaitan & Co. for Petitioner.
Mr. Gautam Ankhad i/b. Ms Sushma Singh for Respondents No.2 to 4.

CORAM : R. G. KETKAR, J.
DATE : OCTOBER 17, 2018

P.C. :

Heard Dr. Tulzapurkar, learned Senior Counsel for the petitioner and Mr. Ankhad, learned Counsel for the respondents No.2 to 4 at length. At the request of Dr. Tulzapurkar, leave to delete rest of the respondents is granted as respondents No.2 to 4 are the only contesting respondents.

2. Rule. Mr. Ankhad waives service for respondents. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final forthwith.

3. This Petition takes exception to the order dated 13.07.2018 passed by the Appellate Bench of the Small Causes Court at Mumbai below exhibit-23 in Revision Application No.237 of 2017. By that order, the Appellate Court allowed the application exhibit-23 made by Ms Daksha Keshrichand Jhaveri and others (respondents No.2, 3 and 4 in this Petition) for joining M/s. New Era Fabrics Limited (for short 'New Era') as respondent No.2 to the Revision Application and directed the plaintiff M/s. Johnson Dye Works Private Limited to implead New Era as respondent No.2 in Revision Application within a period of one

week from the date of the order.

4. The learned Counsel for the parties have invited my attention to the order dated 03.02.2016 passed by this Court in Writ Petition No.8662 of 2015. That Petition was instituted challenging the order dated 15.07.2015 passed by the learned trial Judge below exhibit-42 in R.A.E. Suit No.965/1427 of 2010 as also the order dated 31.07.2017 passed by the Appellate Bench of the Small Causes Court in Revision Application No.237 of 2015. By order dated 03.02.2016, this Court remitted the matter to the Appellate Court for deciding the Revision Application de novo for consideration of the issue regarding the payment of the property tax. The Appellate Court was directed to permit the parties to place on record various orders, decrees passed by this Court as well as City Civil Court, Mumbai in various proceedings and any other material which the parties wish to rely in the Revision Application. The Appellate Court was directed to decide the Application having regard to the said material [Clause 4(C)]. During the pendency of that Revision Application, respondents No.2 to 4 filed application exhibit-23 for impleadment of New Era. By the impugned order, the Appellate Court allowed the application, as indicated earlier. It appears that similar application is taken out in the pending Suit.

5. After arguing the Petition for quite some time, Mr. Ankhad, on instructions of Mr. Nikhilesh Zaveri, respondent No.2 herein, states that the impugned order may be set aside and the Appellate Court may be directed to decide the Revision Application in terms of order dated 03.02.2016 passed by this Court in Writ Petition No.8662 of 2015, afresh, and in the meanwhile, paragraph 4 clause E] of that order may be continued till the decision of the Revision Application. He further states that New Era may not be impleaded as party respondent No.2 in the Revision Application.

6. In view thereof, by consent of respondents No.2 to 4, who are applicants in exhibit-23, impugned order dated 13.07.2018 passed by the Appellate Bench below exhibit-23 in Revision Application No.237 of 2017 is set aside. Application exhibit-23 stands dismissed. The consequential amendment, if any, made in the Revision Application shall stand struck out. Revision Application shall be decided on its own merits in the light of the order passed by this Court on 03.02.2016 in Writ Petition No.8662 of 2015. The Appellate Court will decide the Revision Application on the basis of various orders referred in paragraph 4(C) of the order dated 03.02.2016 and any other material that the parties wish to rely. Till the decision is rendered on the Revision Application, no further steps shall be taken pursuant to the order passed by the trial Court on 15.07.2015. The learned trial Judge will decide the Application made for impleadment of New Era on its own merits and uninfluenced by the observations made in the impugned order and in this order. All contentions in that regard are expressly kept open. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)

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