

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 16 OF 2018

Mr. Murlidhar Lekhraj Odhrani And Anr.

...Applicants.

Versus

Dr. Mrs. Ruchi Kapoor

...Respondents

Mr.E.K.Sasidharan, for the Applicant.

CORAM : G.S.KULKARNI, J.

DATE : 13 February 2018

P.C. :

1. Heard the learned Counsel for the applicants. The facts of the case are quite peculiar. The applicants had instituted L.E.suit No.47 of 2015 seeking eviction of the respondent who was stated to be inducted as a gratuitous licensee however with an agreement that an amount of Rs.3000/- will be paid by the respondent to the applicants for the purpose of maintenance of the suit flat. Despite being served, the respondent did not contest the suit. The learned trial Judge, however, by a judgment and order dated 12 July 2016 dismissed the suit on the ground that the applicants-plaintiffs had failed to prove that the respondent-defendant was a gratuitous licensee, as also that the respondent-defendant was remained to pay Rs.3000/- per month to maintain the suit flat. The applicants-plaintiffs being aggrieved by the judgment of the learned trial Judge approached the Appellate Bench of Small Causes Court in Appeal No.13 of 2016. By the impugned judgment and order dated 11 September 2017, the Appellate Bench dismissed the applicant's appeal and confirmed the findings of the learned trial Judge. It is pertinent to note that the appeal was also not

contested by the respondent. Respondent throughout the proceedings before both the Courts had remained absent. This is how the applicant-plaintiff is before this Court in the present revision application.

2. On the above background the learned Counsel for the applicants at the threshold submits that the applicants-plaintiffs be permitted to withdraw L.E.Suit No.47 of 2015 in view of the findings of the Courts below pointing out a technical defect in the suit of the applicant-plaintiff. It is submitted that the premises are locked.

3. It is the submission of the learned Counsel for the applicant-plaintiff that in the peculiar facts, the applicant is suffering on account of the technical defects in the pleadings due to which the applicant could not succeed before the Courts below. It is his submission that no prejudice whatsoever would be caused to the respondent, if the applicants are permitted to adopt the course of action to withdraw the suit and to institute a proper suit seeking eviction of the respondent-defendant.

3. Considering the peculiar facts of the case and more particularly having considered the adjudication of the suit and appeal by the Courts below, in my opinion, the request as made on behalf of the applicant is reasonable as would also serve the interest of justice. The applicant thus would be required to be permitted to withdraw L.E.Suit No.47 of 2015 with liberty to file a fresh appropriate suit seeking eviction of the respondent-defendant as permissible in law.

4. The Civil Revision Applicant is accordingly disposed of in

terms of the following order:-

ORDER

(I) The applicants are permitted to withdraw L.E.Suit No.47 of 2015 with liberty to file a fresh suit seeking eviction of respondent-defendant as may be permissible in law.

(II) In view of the withdrawal of the suit, the judgment and order dated 12 July 2016 passed by the learned trial Judge and the judgment and order dated 11 September 2017 passed by the Appellate Bench of the Small Causes Court in P.S.C.C.Appeal No.13 of 2016 are rendered inconsequential and stand set aside.

(III) All contentions of the parties in the future proceedings, if any, instituted on behalf of the applicants, are kept open to be adjudicated in the said proceedings.

The petition is accordingly disposed of in the above terms.

No costs.

(G.S.KULKARNI, J.)