

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.5103 OF 2016**

Jaibhavani Mess through Proprietor and owners]
of this Hotel;]
1. Shantabai Dhondiba Dhotre and others.] Petitioners
Vs.
Aparna Shishir Gandhi & Anr.] Respondents

WITH

CIVIL APPLICATION NO.648 OF 2018

Aparna Shishir Gandhi] Applicant

IN THE MATTER BETWEEN:

Jaibhavani Mess through Proprietor and owners]
of this Hotel;]
1. Shantabai Dhondiba Dhotre and others.] Petitioners
Vs.
Aparna Shishir Gandhi & Anr.] Respondents

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Ms. Shubha M. Dandekar, for Petitioner in Writ Petition No. 5103 of 2016.

Mr. Arun Nile i/b Mr. Anoop Sharma for applicant in Civil Application No.648 of 2018 and respondent in Writ Petition No.5103 of 2016.

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CORAM : R.G. KETKAR, J.

DATE : 19TH MARCH, 2018.

P.C.

Heard Ms. Dandekar, learned Counsel for the petitioner in Writ Petition No.5103 of 2016 and Mr. Nile, learned Counsel for the applicant in

Civil Application No.648 of 2018 and respondent in Writ Petition No.5103 of 2016 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the judgment and decree dated 17th March, 2016 passed by the learned Principal District Judge, Solapur in Regular Civil Appeal No.284 of 2002. By that order, the learned Principal District Judge allowed the appeal preferred by the respondents and quashed and set aside the judgment and decree dated 30th April, 2002 passed by the learned Joint Civil Judge. Junior Division, Solapur in Regular Suit No.223 of 1995. The learned District Judge partly decreed the suit and directed the petitioners/defendants to hand over vacant and peaceful possession of the suit premises, more particularly described in para 1 of the plaint to the respondents/plaintiffs within a period of three months from the date of the order.

3. By order dated 3rd May, 2016, Petition was admitted by issuing rule and interim relief staying the operation and implementation of the judgment and decree dated 17th March, 2016 passed by the Principal District Judge was granted. With the assistance of the learned Counsel for the parties, I have gone through the impugned order. A perusal of the impugned order more particularly paragraphs 20 to 39 shows that Principal District Judge has not considered availability of other premises to the plaintiffs. In view thereof, the impugned order cannot be sustained and deserves to be set aside.

4. Mr. Nile states that by order dated 8th March, 2018 this Court has disposed of Civil Revision Application No.462 of 2016 and Writ Petition No.5494 of 2016. This Court restored Civil Appeals and directed the learned Principal District Judge to decide the Appeal within six weeks from the date of appearance of the parties.

5. In view thereof and for the reasons stated in the order dated 18th March, 2018, even this Petition deserves to be allowed. The order dated 17th March, 2016 is set aside. Regular Civil Appeal No.284 of 2002 is restored to the file of the learned Principal District Judge. Parties shall appear before the learned District Judge on 2nd April, 2018 and for that purpose, no fresh notice is required to be issued to the parties. The learned Principal District Judge will allot the appeal to the appropriate Court which will decide it within six weeks from the date of appearance of the parties.

6. Rule is made absolute in the aforesaid terms with no order as to costs. In view of disposal of the main Petition, Civil Application No.648 of 2018 does not survive and as such disposed of.

[R.G. KETKAR, J.]