

psv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**CIVIL REVISION APPLICATION NO.31 OF 2018**

|                                      |                |
|--------------------------------------|----------------|
| Nuruddin A. Malik                    | ...Applicant   |
| V/s.                                 |                |
| Mrs.Sharifabi Abubaker Lambay & Anr. | ...Respondents |

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Mr.A.J. Uniyal for Applicant.  
Mr.P.J. Thorat with Ms.Pratibha Shelake for Respondents.  
Mr.Abubaker Dawood Lambay, Respondent No.2 in person, present.

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**CORAM : G.S. KULKARNI, J.**

**DATE : 24<sup>th</sup> JANUARY, 2018**

**P.C.:**

Challenge in this revision application is to the judgment and order dated 6<sup>th</sup> October 2017 passed by the appellate bench of the Small Causes Court at Mumbai in Appeal No.789 of 2004.

2. The litigation has a history of a previous round when the applicant had approached this Court in Civil Revision Application No.282 of 2016 challenging the judgment and decree dated 30<sup>th</sup> March 2016 passed by the appellate bench of the Small Causes Court. By an order dated 1<sup>st</sup> August 2016 this Court had quashed and set aside the judgment and decree dated 30<sup>th</sup> March 2016 and Appeal No.789 of 2004 was restored to the file of the appellate Court. The order passed by this Court reads thus:-

*“(i) Judgment and decree dated 30.3.2016 is quashed and set aside and Appeal No.789 of 2004 is restored to the file of the Appellate Court.*

(ii) *Parties are permitted to lead additional evidence. The Appellate Court may either take additional evidence or direct the trial Court to take such evidence and to transmit the evidence so recorded to the Appellate Court. Parties assure that they will extend full cooperation for recording of additional evidence and will not seek undue adjournments. Let that exercise be done within three months from the date of appearance of the parties and in the event of taking additional evidence by the trial Court, the trial Court shall transmit the evidence so recorded to the Appellate Court forthwith.*

(iii) *After completion of recording of evidence, the Appellate Court is requested to dispose of the Appeal within three months from the receipt of additional evidence so recorded. All contentions of the parties on merits are expressly kept open. The Appellate Court will decide the Appeal uninfluenced by the observations made herein. The defendant shall neither create third party interest nor part with possession.*

(iv) *Rule is made absolute in the aforesaid terms with no order as to costs."*

3. In pursuance of the said order passed by this Court, the appellate bench had taken up the appeal to be decided afresh. In paragraph 3 of the operative order passed by Court, it was observed that all contentions of the parties on merits are expressly kept open. The grievance of the applicant in this revision application is that in adjudication of the appeal afresh, the appellate bench has confined itself not to the entire proceeding which arose from the judgment and order dated 13<sup>th</sup> August 2004 passed by the learned trial Judge in R.A.E. Suit No.2954 of 1984, but has proceeded on the basis referring and relying on the judgment and order dated 30<sup>th</sup> March 2016 by which the appeal was adjudicated in the first round and which orders are set aside by this Court. The contention of the learned Counsel for the applicant that the adjudication of the appeal ought to have been confined to all the issues which arose from the impugned judgment and order passed by the learned trial Judge including the entire evidence which was on record, as the scope

of adjudication of the appeal was a full fledged adjudication after the order was passed by this Court, setting aside the earlier judgment and order.

4. After this application was heard on the earlier occasion, learned Counsel for the respondents had sought time to take instructions as to whether the respondents would be agreeable for remand so that the appeal can be decided afresh on all issues on merits of the matter as would arise from the judgment and decree dated 13<sup>th</sup> August 2004 in R.A.E. Suit No.2954 of 1984.

5. Learned Counsel for the respondents, on instructions of respondent No.2 who is present in the Court, is agreeable for adjudication of the appeal No.789 of 2004 afresh. In view of above consent and also considering the observations as made by the appellate bench in the impugned judgment and order dated 6<sup>th</sup> October 2017, it is in the interest of justice that the appeal is remanded back to the appellate bench of the Small Causes Court at Mumbai for denovo consideration and adjudication afresh on all the issues as would arise from the judgment and order passed by the learned trial Court. Accordingly, the following order:-

#### **ORDER**

- i. The impugned order dated 6<sup>th</sup> October 2017 passed by the appellate bench of the Small Causes Court in Appeal No.789 of 2004 is quashed and set aside;
- ii. The appellate bench of the Small Causes Court is directed to hear the parties on the merits of the respective pleas and denovo adjudicate the Appeal No.789 of 2004 without being influenced by any earlier orders passed by the appellate bench;

- iii. The adjudication of the appeal be undertaken as expeditiously as possible and considering that the suit is of the year 1984, the appeal be decided within a period of 4 months from today;
- iv. The parties shall remain present before the appellate Court on 29<sup>th</sup> January 2018 along with the copy of this order;
- v. The Civil Revision Application is allowed in the above terms. No costs.

**[G.S. KULKARNI, J.]**