

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.2697 OF 2019

Central Silk Board] Petitioner

Vs.

Meghdoot Co-operative Housing]

Society Ltd.] Respondent

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Mr. Chandrakant Chavan a/w Mr. Y.S. Bhate, learned Counsel for the Petitioner.

Mr. Jaydeep Deo, learned Counsel for the Respondent.

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CORAM : R.G. KETKAR, J.

DATE : 4TH MARCH, 2019.

P.C.

Heard Mr. Chavan, learned Counsel for the petitioner and Mr. Deo, learned Counsel for the respondent at length.

2. This Petition takes exception to the order dated 7th January, 2019 passed by the Appellate Bench of the Court of Small Causes at Mumbai in Misc. Appeal No.110 of 2016 arising from Mesne Profit Application No.3 of 2007. There respondent, hereafter referred to as “plaintiff” instituted R.A.E & R Suit No.448/1347 of 1987 against the petitioner, hereinafter referred to as 'defendant'. The suit was decreed on 29th January, 2001. The appeal preferred by the defendant was dismissed on 18th October, 2004. The defendant instituted Writ Petition in this Court which was dismissed on 24th August, 2005. S.L.P. preferred by the defendant was dismissed by the Apex Court on 23rd January, 2006.

3. It is common ground between the parties that on 31st July, 2006, the defendant handed over possession of the suit premises to the plaintiff. Thereafter, the plaintiff filed application on 11th September, 2007 for determination of mesne profits. By order dated 15th October, 2015, the learned trial Judge dismissed the application. Aggrieved by that decision, the plaintiff preferred appeal. The defendant preferred Cross Objection vide Exhibit 9. By the impugned order, the Appellate Court partly allowed the appeal and rejected Cross Objection Exhibit 9. The Appellate Court set aside the trial Court's order and remanded the Mesne Profit Application No.3 of 2007 for fresh hearing in view of the observations made in the impugned order (i.e in the order dated 15th October, 2015). It is against this order, the defendant has instituted the present Petition.

4. Mr. Chavan after arguing the Petition for quite some time submitted that as the impugned order is of remand, all contentions of the defendant including applicability of principle of estoppel may be kept open.

5. In view thereof, the Petition is disposed of keeping all the contentions of the parties expressly open. Order accordingly.

[R.G. KETKAR, J.]