

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application (ST) NO. 7668 OF 2019

Bharat Murlidhar Kowli

...Applicant

Versus

Mr. Nagesh Babaji Sawant

And others

...Respondents

....

Mr. R.C. Dhuru a/w. Ms. Bhakti Kansara i/b. Amruta Athavale, Advocate for the Applicant.

Mr. R.R. Salvi a/w. Ms. Rajeeta Matkar, Advocate for Respondent No.1.

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CORAM : R. G. KETKAR, J.

DATE : 30th APRIL, 2019

P.C.

1. Heard Mr. R.C. Dhuru, learned counsel for the applicant and Mr.R.R. Salvi, learned counsel for respondent No.1, at length.
2. In the order dated 27.3.2019, the statement made by Mr.Dhuru that respondent No.1 is the only contesting respondent was recorded. As respondent No.1 was represented, the parties were put to notice that subject to time constraint and convenience of the Court, C.R.A. will be disposed of finally at the stage of admission. In view of the statement recorded in the order dated 27.3.2019, the notice on rest of the respondents is dispensed with.

3. Rule. Mr. Salvi waives service. Having regard to the narrow controversy raised in this C.R.A. as also at the request and by consent of the parties, Rule is made returnable forthwith and the C.R.A. is taken up for final hearing.

4. By this application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicant has challenged the impugned order dated 18.1.2019 passed by the Appellate Court of the Small Causes Court at Mumbai in Appeal No.322/2018.

5. One of the contentions advanced by Mr. Dhuru is that the impugned order dated 18.1.2019 is passed by the Appellate Court without issuing notice to the applicant as also without hearing the applicant. Mr. Salvi, with his usual fairness, did not dispute this position.

6. As the impugned order was passed without issuing notice and even without hearing the applicant, on this ground alone, is required to be set aside and appeal No.322/2018 deserves to be restored to its original position. Hence, the petition is disposed of in the following order :

i. The impugned order dated 18.1.2019 passed by the Appellate Court of the Small Causes Court at Mumbai in Appeal

No.322/2018 is set aside. Appeal No.322/2018 is restored to its original position. Respondent No.1 shall serve copy of the appeal on the applicant. The appellate Court will ensure that the proceedings of appeal are served on the applicant and will thereafter proceed to decide the appeal on its own merits and in accordance with law.

- ii. The parties agree that they will appear before the Appellate Court on 10.6.2019 and for that purpose no fresh notice be issued to them. The appellate Court will fix a suitable date and will thereafter proceed to decide the appeal.
 - iii. All contentions of the parties on merits are expressly kept open.
 - iv. Rule is made absolute in aforesaid terms with no order as to costs.
- Order accordingly.

7. All concerned parties, including the Appellate Court, to act upon the authenticated copy of this order. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)