

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7196 OF 2019

Kshama Haresh Mehta

...Petitioner

vs.

Blowcon Plastics Pvt. Ltd. and Another

...Respondents

Mr. B.R. Dalal, for the Petitioner

Mr. Abhay Parab, for Respondent No. 1.

CORAM : R. G. KETKAR, J.

DATE : JULY 24, 2019

P.C.:

. Heard Mr. B.R. Dalal, learned counsel for the Petitioner and Mr. Abhay Parab, learned counsel for Respondent No. 1. Mr. Parab undertakes to file vakalatnama within one week from today.

2. Mr. Dalal seeks leave to delete Respondent No. 2 on the ground that Respondent No. 2 did not challenge the order dated 23rd March, 2015 passed by the learned trial Judge below Exhibit 44 in R.A.E. & R Suit No. 861/1372 of 2005. In view thereof, leave to delete Respondent No. 2 is granted. The amendment to be carried out forthwith.

3. By this Petition under Article 227 of the Constitution of India

the Petitioner challenges the order dated 8th March, 2019 passed by the Appellate Bench of the Small Causes Court at Mumbai in Revision Application No. 167 of 2015. By that order the Appeal Court allowed the Revision Application preferred by the Respondent No. 1 herein and set aside the order passed by the learned trial Judge below Exhibit 44.

4. Rule. Mr. Abhay Parab waives service for Respondent No. 1. Having regard to the narrow controversy raised in this Petition, rule is made returnable forthwith and the Petition is taken up for final disposal.

5. Mr. Dalal invited by attention to paragraph No. 9 of the impugned order. In paragraph No. 9 the attention of the Appellate was invited to this Court's order dated 24th March, 2014 passed in Writ Petition No. 537 of 2014 in respect of Gala No. B/3A at Pannalal Silk Mills Compound, L.B.S. March, Bhandup. The Appellate Court observed that the trial Court has not taken any care and efforts to verify what was the dispute before this Court in the said another matter and in that capacity and under which provision, the order came to be passed by this Court and without

verifying the order passed by this Court, learned trial Court passed the order. The learned trial Court did not find it necessary to give opportunity of hearing to Defendant No. 1. He submitted that this Court in similarly situated Gala has issued mandatory injunction. The trial Court did not examine as to whether the decision of this Court in Writ Petition No. 537 of 2014 dated 24th March, 2014 is applicable in the facts of the present case or not. The Appellate Court did not examine this aspect.

6. In view thereof, Mr. Parab on instructions consents for setting aside the impugned order and restoration of the Revision Application No. 167 of 2015.

7. In view thereof, by consent of the parties, the Petition is disposed of. The Revision Application No. 167 of 2015 is restored to its original position. The Appellate Court shall decide the Revision Application and deal with the contentions of the parties as regards the applicability or otherwise of the decision of this Court in Writ Petition No. 537 of 2014 dated 24th March, 2014. All contentions of the parties are expressly kept open.

8. Rule is made absolute in the aforesaid terms. No order as to costs.

9. The learned counsel for the parties assure that they will appear before the Appellate Court on 5th August, 2019 and for that purpose no notice be issued to them. On that date, the Appellate Court will fix a suitable date and dispose of the Revision Application within four weeks from the date so fixed. Order accordingly.

(R.G. KETKAR, J.)