

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.58 OF 2019

Jamil Mohammad Hassan Shaikh ... Applicant
Vs.
Ashpak Usman Kazi ... Respondent

Ms Rekha Shukla i/b. Ms Yojana Gandhi for Applicant.
Mr. Jaydeep Deo for Respondent.

CORAM : R. G. KETKAR, J.
DATE : FEBRUARY 27, 2019

P.C. :

Heard Ms Shukla, learned Counsel for the applicant and Mr. Deo, learned Counsel for the respondent at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicant, hereinafter referred to as 'defendant', has challenged the judgment and decree dated 25.10.2018 passed by the learned District Judge-5, Pune in Regular Civil Appeal No.149 of 2010. By that order, the learned District Judge partly allowed the appeal preferred by the respondent, hereinafter referred to as 'plaintiff', and set aside the judgment and decree dated 15.12.2009 passed by the learned Additional Judge of Small Causes Court, Pune in Civil Suit No.370 of 2006 except finding on the issue of nuisance. The learned District Judge decreed the Suit and directed the defendant to handover vacant and peaceful possession of the suit premises to the plaintiff within two months.

3. Rule. Mr. Deo waives service for the respondent. At the request and by consent of the parties, Rule is made returnable forthwith and the Application is taken up for final hearing.

4. In the earlier round of litigation, by order dated 23.04.2018, C.R.A.No.134 of 2018 was disposed of. By that order, C.R.A.No.134 of 2018 was allowed and the order dated 09.01.2018 passed by the learned District Judge-7, Pune was set aside by consent of the parties. Even after remand, the learned District Judge, without appreciating the evidence on record, has allowed the appeal. During the course of hearing, I indicated that the Court is inclined to admit C.R.A. by issuing Rule.

5. Mr. Deo submits that respondent is present in the Court. He has tendered photocopy of his Aadhar Card, which is taken on record and marked 'X' for identification. Upon taking instructions from him, he submits that by consent, the impugned order may be set aside and the appeal may be restored to the file of the District Court. He further submits that the learned District Judge may be directed to dispose of the appeal in a time bound manner. Ms Shukla submitted that in case the matter is remanded to the District Court, the defendant will extend full co-operation for disposing of the appeal in a time bound manner.

6. In view thereof, by consent of the parties, Application is disposed of in the following terms:

- a. Impugned judgment and decree dated 25.10.2018 passed by the learned District Judge-5, Pune in Regular Civil Appeal No.149 of 2010 is set aside;
- b. Regular Civil Appeal No.149 of 2010 is restored to its original position;
- c. The learned Counsel for the parties will appear on 11.03.2019 before the learned Principal District Judge, Pune, who shall assign the matter to the Judge other than the Judge, who has passed the impugned order. It is made clear that this does not cast any aspersion on the learned Judge who has passed the impugned order;

- d. The concerned Judge shall fix the suitable date and dispose of the appeal as expeditiously as possible and in any case, within three months from fixing the Appeal for hearing;
- e. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)

Minal Parab