

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1125 OF 2022

Shri Nilesh Ramesh Pritmani & Anr.

....Petitioners

Versus

Malraj Bhagwandas Kapadia (Since Deceased)
through Lrs & Ors.

....Respondents

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Mr. Jaydeep S. Deo for the Petitioner.
Mr. Jayesh Bhatt for the Respondent.

CORAM : S. G. DIGE, J.

DATE : 9th MARCH 2023.

P.C. :

1. Rule. Rule made returnable forthwith. By consent, heard finally at admission stage.

2. It is contention of learned counsel for the Petitioners that Respondents land lord had filed suit for eviction against the Petitioners before the Small Causes Court. The Petitioners had filed written statement before the Small Causes Court (for short trial Court). Thereafter, the concerned advocate did not inform the

Petitioners about the progress in suit. Hence, ex-parte order was passed against the Petitioners. The Petitioners challenged ex-parte order before the same Court, the said Application was rejected. Thereafter, it was challenged before the Appellate Court of Small Causes Court. Before Appellate Court the Petitioners' counsel argued matter before bench of two Judges, after completing argument of Petitioners one of the Judge of Appellate Court was elevated as High Court Judge. Thereafter, the bench was re-constituted, but the opportunity was not given to the Petitioners to argue the matter before the new bench of Appellate Court. Hence, requested to allow the Writ Petition.

3. Learned counsel for Respondents, vehemently submits that there is concurrent finding against the Petitioners. The Petitioners want to prolong the matter. Hence, he had filed different Applications before the trial Court, and Appellate Court. Sufficient opportunity was given to the Petitioners to go on with the matter before the trial Court and after considering the evidence led before the trial Court, the trial Court has decreed the suit filed by the Respondents. Thereafter, the Petitioners' Application for setting aside ex-parte decree was decided by the trial Court on merit. Before Appellate Court also after hearing

Petitioners, the said Application is decided on merit. Hence, no interference is required in it.

4. Learned counsel further submits that Petitioners have not paid the rent amount since last several years. Hence, direction be given to the Petitioners to deposit the rent amount .

5. I have heard both learned counsel, perused impugned order passed by the Appellate Bench, Small Causes Court. By order dated 14 March, 2020, the Appellate Bench has dismissed the revision application filed by the Petitioners to set aside ex-parte order. I have gone through the Roznama filed with writ petition. This roznama shows that Petitioner's counsel completed his argument before Appellate Bench thereafter, one Judge of that Appellate Bench got elevated and by appointing new Judge the said Bench was reconstituted. No opportunity was given to the Petitioners to argue this matter before the new Appellate Bench. As per principle law of natural justice, equal opportunity should be given to both the parties to put their side.

5. In view of above, I pass following order.

ORDER

- i. Writ petition is allowed in terms of prayer clause

(b) rule made absolute the order dated 14 March, 2020 passed by the Appellate Bench of Small Causes Court, Mumbai in Miscellaneous Appeal No. 326 of 2016 is quashed and set aside the Appellate Bench is directed to hear the Miscellaneous Appeal or the Petition on its own merit and decide it as early as possible, preferably within three months.

- ii. The Petitioners are directed to deposit arrears of rent amount till date before the Small Causes Court within 15 days.
- iii. Writ Petition is disposed of.

(S. G. DIGE, J.)