



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL REVISION APPLICATION NO.380 OF 2023
WITH
INTERIM APPLICATION NO.13461 OF 2023
IN
CIVIL REVISION APPLICATION NO.380 OF 2023**

Mulraj Bhagwands Kapadia
(since deceased)

1a. Smt. Minaxi Mulraj Kapadia
and Ors.

...Applicants

Versus

Nilesh Ramesh Pritmani and Ors.

...Respondents

...

Mr. Jayesh Bhatt for the Applicants

Mr. Jaydeep Deo for Respondent Nos.1 and 2.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 23rd AUGUST, 2023.

P.C.:-

1. With consent of the parties, the matter is heard finally at the stage of admission.
2. The Applicant herein has challenged order dated 07/06/2023 whereby the Appellate Court set aside the impugned order dated 30/06/2016 passed in MARJI Application No.380 of 2015.
3. Heard Mr. Jayesh Bhatt, learned counsel for the Applicants and

Mr. Jaydeep Deo, learned counsel for the Respondent Nos.1 and 2. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

4. The Applicant (orig. Plaintiff), who is the landlord has filed a suit for eviction. The records reveal that the Defendants had initially contested the suit but subsequently failed to remain present and that the suit was decreed ex parte on 16/10/2014. The Respondents filed application under Order 9 Rule 13 of CPC for setting aside ex-parte decree, which came to be dismissed by order dated 30/06/2016 mainly on the ground that application under Order 9 Rule 13 of the CPC was not maintainable and the decree being under Order 17 Rule 3 ought to have been challenged in an appeal.

5. The Defendants challenged the said order in Miscellaneous Appeal No.326 of 2016. By judgment dated 14/03/2020 the Appellate Court dismissed the appeal. Being aggrieved by the said order, the Respondent filed Writ Petition (Stamp) No.1371 of 2021. By order dated 09/03/2023 this Court allowed the Writ Petition and remanded the matter to the Appellate Court with directions to hear the parties and decide the same on merits within three months. Pursuant to the said

order, the parties were heard and by the impugned order dated 07/06/2023 the Appellate Court set aside the impugned order dated 30/06/2016 mainly on the ground that the decree was passed under Order 17 Rule 2 of the CPC and the application under Order 9 Rule 13 was maintainable. The Appellate Court therefore remanded the matter with directions to the Trial Court to consider the application under Order 9 Rule 13 and decide the same in accordance with law.

6. Learned counsel for the Applicant contends that the entire material was available before the Appellate Court and hence the Appellate Court could have decided the application on merits. It is submitted that the Appellate Court was not justified in remanding the matter to the Trial Court.

7. The records reveal that the Trial Court had dismissed the application under Order 9 Rule 13 mainly on the ground that the decree was passed on merits and it was not an ex parte decree and hence the application under Order 9 Rule 13 was not maintainable. A perusal of paragraph 26 of the impugned order reveals that the Trial Court has not even considered the contention of the Respondents that they were not duly served with summons. Since the application itself was dismissed on preliminary issue of maintainability, without going into merits of the

matter, in my considered view the Appellate Court has not committed any illegality or jurisdictional error in remanding the matter with directions to the Trial Court to decide the application under Order 9 Rule 13 of the CPC on merits. Learned counsel for the Respondents states that the Trial Court has already heard the matter.

8. Considering the above facts and circumstances, there is no merit in this revision application and the same is dismissed.

9. It is seen that the Appellate Court had directed the Trial Court to decide the application by July-2023. It is stated that the application was not disposed of in view of pendency of the revision application. The Trial Court to decide the application as expeditiously as possible and in any event within a period of two months from the date of receipt of copy of this order.

10. Interim application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)