

Harish

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

WRIT PETITION NO. 483 OF 2023

Madhav Shashikant Niphadkar & Anr. ...Petitioners

V/s.

Jitendra Narayan Vaishya & Ors. ...Respondents

Mr. Rajesh Kachare i/b Ms. Sonal Dabholkar, for the
Petitioners.

Ms. Vasanti S. Dighe, for Respondent No.1.

CORAM : MADHAV J. JAMDAR, J.

DATE : 23rd JANUARY, 2023

P.C.:

1. Heard Mr. Rajesh Kachare, learned counsel appearing for the Petitioners and Ms. Vasanti Dighe, learned counsel appearing for Respondent No.1.

2. The impugned order in the present Writ Petition is order dated 15th November, 2022 passed by the Revisional Court of the Small Causes Court at Mumbai in Revision Application No. 256 of 2022 along with Exh-6 (Stay Application).

3. By the impugned order dated 15th November, 2022, the order dated 17th August, 2022 passed below Exh- 24 in R.A.E.

Suit No. 1336 of 2019 passed by the learned Judge, Small Causes Court at Mumbai was quashed and set aside. By order dated 17th August, 2022 passed by learned Judge, Small Causes Court at Mumbai, the said Application filed under Section 30 r/w. Order 11 of the Civil Procedure Code, 1908 was allowed. By the said order, the Defendants were directed to answer the interrogatories on or before the next date.

4. At the hearing of this Writ Petition on earlier occasion, Ms. Dighe, learned counsel appearing for the Respondent no. 1 i.e. Original Defendant No. 1 expressed an apprehension that, after the Defendants answer the interrogatories, the Plaintiffs i.e. Madhav Shashikant Niphadkar and Sudhir Shashikant Niphadkar will not file their affidavit of examination-in-chief and, therefore, the Defendants will not be able to cross-examine them to bring on record certain aspects which are very vital for trial.

5. Mr. Kachare submitted that, the said apprehension is without any basis as Petitioners are going to examine themselves as witnesses in the trial. After taking instructions, Mr. Kachare states that, the Petitioners are ready to file affidavit in this Court and, accordingly, affidavit

dated 20th January 2023 has been filed in this Court, wherein, the Petitioners have stated that they will file their affidavit of examination-in-chief and they will also make themselves available for cross-examination. The Respondent No. 1 has also filed affidavit dated 23rd January 2023.

6. Ms. Dighe, after taking instructions states that, in view of affidavit dated 20th January 2023 filed by the Petitioners, an apprehension which the Respondent No. 1 has that the Petitioners i.e. Plaintiffs will not file affidavit of examination-in-chief and will not be available for cross-examination no more survive. Therefore, she states that she has instructions to withdraw the Revision Application No. 256 of 2022 filed before the Revisional Court of Small Causes Court at Mumbai. In view of the withdrawal of the said Revision Application No. 256 of 2022, order dated 15th November, 2022 passed by the Division Bench of the Small Causes Court at Mumbai i.e. the Revisional Court is quashed and set aside and the said Revision Application No. 256 of 2022 is dismissed as withdrawn.

7. As a result of withdrawal of the said Revision Application No. 256 of 2022, the order dated 17th August,

2022 passed by the learned Judge, Small Causes Court at Mumbai below Exhibit-24 in R.A.E. Suit No. 1336 of 2019 is revived.

8. Ms. Dighe, after taking instructions submits that, the Defendants will comply with order dated 17th August, 2022 passed below Exh-24 in R.A.E. Suit No. 1336 of 2019 within a period of three weeks from toady.

9. The Writ Petition is disposed of in the above terms with no order as to costs.

(MADHAV J. JAMDAR, J.)