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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 869 OF 2024

Nargis Majid Oomerbhoy & Anr. Petitioners

VERSUS

Farida Areshi Irani & Ors. Respondents

Ms.Kanchan Pandare for the Petitioners.

Mr.Venkatesh Dhond, Senior Counsel a/w. Mr.Prateek Pansare,
Ms.Shlesha Sheth, Ms.Kalyani Deshmukh i/b. FZB Associates for
the Respondent Nos. 1 to 3.

CORAM: RAJESH S. PATIL, J.

DATE : 24 JANUARY, 2024

P.C. :-

This writ petition filed by the original defendant no.7A and original defendant no.7C, challenging the impugned order dated 3 January, 2024 passed on order below Ex.61 in Appeal No. 24 of 2018.

2. The respondent nos. 1 to 3 had filed a suit for eviction on the grounds of subletting, additions and alterations and nuisance before the Court of Small Causes under the Rent Act. The said suit was decreed on the ground of nuisance, subletting, waste and damage and alternate accommodation.

3. Being dissatisfied with the eviction decree, three appeals were filed viz. (i) Appeal No. 253 of 2017 by defendant no.7A (Nargis), (ii) Appeal No. 24 of 2018 by defendant no.7B (Nadeem) and (iii) Appeal No. 252 of 2017 by defendant no.7C (Heena).

4. Ms.Pandare, learned counsel appearing for the petitioner submits that the appeals filed by Nargis and Heena were dismissed for default. She further submits that Marji Application for restoration filed against the dismissal order were also rejected. She further submits that the said order dismissed for default and Marji Application, thereafter have not been challenged as of date by Nargis and Heena.

5. Mr.Dhond, learned senior counsel appearing for the respondent nos. 1 to 3, submits that Appeal No. 24 of 2018 filed by Nadeem was thereafter heard. And on 11 December, 2023, the arguments on behalf of Nadeem was concluded. He further submits that the advocates for petitioners herein i.e. Heena and

Nargis, made their arguments on 14 December, 2023, and the matter proceeded further to 15 January, 2023 for rejoinder arguments to be made on behalf of the plaintiffs. Learned counsel for the plaintiffs submitted his arguments on 15 January, 2024 and on 19 January, 2024. The matter thereafter proceeded and was adjourned to 22 January, 2024. On that day, rejoinder arguments were made by the learned counsel for the Nadeem/appellant/defendant no.7B.

6. In the meanwhile, on 11 December, 2023, an application Ex.61 was filed on behalf of Nargis (defendant no.7A) and by Heena (defendant no.7C). The said application sought production of certain documents.

7. On 22 January, 2024 and 23 January, 2024 the matter was kept for further rejoinder submissions to be made on behalf of Nadeem/appellant/defendant no.7B. Mr.Dhond submits that however the learned counsel for the Nadeem/appellant/defendant no.7B did not attend the hearing.

8. The present writ petition challenges the order dated 3 January, 2024 on application Ex.61 filed by Nadeem/defendant no.7B. It is pertinent to note that both Nargis and Heena had filed a separate appeals being Appeal No. 253 of 2017 and Appeal No. 252 of 2017 respectively challenging the impugned judgment and decree passed by the Trial Court. Both the appeals have been dismissed for default. An application challenging an order of dismissal for default has also been dismissed. The only appeal pending before the Appellate Bench was Appeal No. 24 of 2018 filed by Nadeem.

9. In the said appeal, the present petitioners were respondent nos. 11A and 11B. The application sought a direction to the plaintiffs/respondent nos. 1 to 3 to produce certain documents.

10. Learned counsel for the petitioners is not able to show any provisions under Code of Civil Procedure, 1908 to file such an application. She is also not able to show what difference it will make to the hearing of the appeal filed by Nadeem when the

appeals filed by them are already been dismissed. In such a situation, I hereby conclude that no case is made out to interfere with the impugned order passed by the Appellate Bench of the Small Causes Court.

11. Writ petition is accordingly dismissed.

[RAJESH S. PATIL, J.]