

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 668 OF 2023
WITH
INTERIM APPLICATION NO. 1591 OF 2024

Shamim Ahmed Hafizullah Siddiqui & Anr. .. Applicants

Versus

Mohd. Iqbal Ali Mohd Wadia & Ors. .. Respondents

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- Mr. M.A. Khan a/w Mr. Afnan Husain for Applicants
- Mr. Ashok Pande a/w Mr. Shobhit Shukla for Respondent No. 1
- Mr. P.G. Lad a/w Ms. Shreya Shah for Respondent Nos. 2 and 3

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 21, 2024

P. C.:

1. Heard Mr. Khan, learned Advocate for Applicants; Mr. Pande, learned Advocate for Respondent No. 1 and Mr. Lad, learned Advocate for Respondent Nos. 2 and 3 – MHADA.

2. Present Civil Revision Application (CRA) takes exception to the order dated 11.10.2022 passed by learned City Civil Court, Mumbai in Chamber Summons No. 466 of 2022 filed by Applicants (Org. Defendant Nos. 3 and 4). Chamber Summons is filed under O. VII, R. 11 of the CPC on the premise that Defendant Nos. 3 and 4 were in possession of the suit shop prior to its demolition and redevelopment upto the year 2008 and in that view of the matter, it is the case of the Revision Applicants that the suit shop was handed over by Applicants

to MHADA. This is the case pleaded by Mr. Khan who appears for Defendant Nos. 3 and 4.

3. *PER CONTRA*, Mr. Pande learned Advocate for Respondent No. 1 (Org. Plaintiff) would submit that the case of the Plaintiff is completely to the contrary. He would submit that Plaintiff's Suit filed in 2010 is for declaration that Plaintiff is entitled to permanent alternate accommodation of the suit shop in the newly constructed building in lieu of the old premises along with injunction. It is also submitted at the bar by both the learned Advocates that prior to filing of the present Suit, Plaintiff had filed Suit being Suit No. 918/2010 previously seeking a declaration that Plaintiff would be entitled to permanent alternate accommodation as against MHADA only but that Suit was withdrawn on 22.06.2010 and the present Suit i.e. Suit No. 1570/2010 was filed impleading Defendant Nos. 3 and 4 also. According to Plaintiff, Plaintiff is the statutory tenant of the suit shop which was originally nomenclatured as shop No. 346 (346A) and he had given a licence to Defendant Nos. 3 and 4 to conduct from the said shop. Hence Mr. Pande on behalf of the Plaintiff would contend that the rehabilitated permanent accommodation ought to be handed over by MHADA to the Plaintiff who is the original tenant and not his licensee. Be that as it may, the case of Defendant Nos. 3 and 4 is different. Mr. Khan would submit and contend that said Defendant

Nos. 3 and 4 were occupants of the suit shop since 1998 upto 2008 when it is their case that they handed over the possession of the suit shop to MHADA. In the meanwhile, Mr. Khan has made one more additional submission that there was exchange of talks between the parties in the interregnum for purchase of the shop by the Defendant Nos. 3 & 4. Be that as it may, all these are rival submissions against each other's case and disputed questions of facts. The case of the Plaintiff and Defendant Nos. 3 and 4 are in fact contrary to each other. Ultimately it will be either the Plaintiff or Defendant Nos. 3 and 4 who will be entitled to the permanent alternate accommodation i.e. shop premises constructed by MHADA at the end of the suit proceedings. The said permanent alternate accommodation - suit shop is at present locked by MHADA due to the pending Suit. It is a tragedy that for the last 15 years parties are fighting with each other in the Trial Court. Considering that the permanent alternate accommodation - suit shop is now ready for occupation, this Court is of the firm belief and opinion that rather than hearing the present proceedings under O. VII, R. 11 and giving any imprimatur of this Court *prima facie* on the submissions made by either parties, justice would be served if parties are relegated to the Trial Court and the Suit is directed to be disposed of within a time bound programme and as expeditiously as possible.

4. Considering the rival submissions of the parties, it is imperative that MHADA plays an active role in the Suit proceedings since they are also a party Defendant. I am informed that there is a “no written statement” order passed by the learned Trial Court against MHADA since MHADA has not filed its written statement. Mr. Lad represents MHADA. He requests the Court to pass appropriate directions enabling MHADA to file its written statement so that it may enure to the benefit of the rival parties and rival contentions which may ultimately enable them to lead cogent evidence before the learned Trial Court. In that view of the matter, the order of ‘no written statement’ passed against MHADA is quashed and set aside by this Court in the interest of justice with a direction that MHADA shall file its written statement in the Suit within a period of four weeks from today positively by appending all necessary documents in respect of the suit shop from its record to enable the parties to lead appropriate cogent evidence and the learned Trial Court to dispose of the suit proceedings.

5. I am informed by Mr. Pande that Chamber Summons No. 208 of 2022 is pending before the learned Trial Court which is for amendment of the Suit Plaint. According to him, the amendment is necessary to place on record certain documents which are relevant and material to the suit proceedings. Be that as it may, learned Trial Court shall dispose of the said Chamber Summons No 208 of 2022 as

expeditiously as possible and in any event within a period of four weeks from today without any further delay after hearing the parties.

6. The defence raised by Defendant Nos. 3 and 4 as to the maintainability of the Suit under O. 23, R. 1(4) of the CPC is expressly kept open to be framed as an appropriate issue by the learned Trial Court. Mr. Pande would submit that before framing of such issue, Plaintiff will have to be heard. Undoubtedly before framing of any issue, Plaintiff as well as Defendant both are always heard. Issues are framed on the basis of assertions made in the Suit plaint and denials made by Defendants in their written statement on the cause of action and issues are strictly framed in accordance with the provisions of the CPC. In that view of the matter, the impugned order dated 11.10.2022 stands worked out.

7. Learned Trial Court is directed to dispose of Short Cause Suit No. 1570/2010 as expeditiously as possible and in any event within a period of 10 months from today. Parties shall co-operate with the learned Trial Court for final disposal of the Suit and shall not seek unnecessary adjournments unless it is absolutely necessary. Needless to state that that all contentions of the parties are expressly kept open.

8. Parties shall appear before the learned Trial Court on 26.03.2024 at 10:30 a.m. for fixing schedule for hearing of the Suit

proceedings alongwith a server copy of this order and learned Trial Court shall fix the further schedule at its discretion.

9. With the above directions, Civil Revision Application as well as pending Interim Application are disposed.

[MILIND N. JADHAV, J.]

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by RAVINDRA
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