

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12152 OF 2016

ALONGWITH

WRIT PETITION NO. 1833 OF 2024

Mr. Romesh Satyanarayan Sharma

...Petitioner

Versus

M/s. Ramnarain Sons Pvt. Ltd. And Ors.

...Respondents

Mr.G.S.Godbole, Senior Advocate a/w. Ms.Eventa A.Gonsalves,
Mr.Reyden L. Gonsalves for the Petitioner in WP/12152/2016
and WP/1833/2024.

Mr.Javed Akhtar Khan for the Respondent No.2 in
WP/12152/2016.

Mr.Bipin J. Joshi for the Respondent in WP/1833/2024.

CORAM: RAJESH S. PATIL, J.

DATE : 22 MARCH, 2024

P.C. :-

Mr.Khan and Ms.Gonsalves have tendered the minutes of
the order dated 22 March, 2024. They submits that the said
minutes of the order is signed by them on behalf of their clients.
The minutes of the order dated 22 March, 2024 is taken on
record and marked 'X' for identification. The same reads as
under :-

MINUTES OF ORDER

1. Rule. Rule made returnable forthwith and Petitions taken up for hearing. Respective Advocates for the Respondents No.1 and 2 waive service of Rule. In view of the nature of Orders which are impugned in the Petition and the fact that Respondent Nos. 3 to 5 had not appeared before the Appellate Bench of Court of Small Causes, Mumbai (Bandra Branch) in Revision Applications No. 35 of 2015, 122 of 2015 and 63 of 2016 and the fact that they are no longer contesting R.A.E. & R. SUIT No. 54/176 of 1994; service of Rule on the said Respondent Nos. 3 to 5 is waived.

2. Challenge in W.P No. 12152 of 2016 is to common Judgment and Order dated 19.9.2016 passed by Appellate Bench of the Court of Small Causes at Mumbai (Bandra Branch) thereby dismissing Revision Application Nos. 35 of 2015, 122 of 2015 and 63 of 2016 all filed by the Petitioner/ Original Defendant No.2.

3. Challenge in W.P No. 1833 of 2024 is to the impugned Order dated 20th January, 2022 passed by the Court of Small Causes at Mumbai (Bandra Branch) thereby dismissing Application Exhibit 277 in RAE & R Suit No. 54/176 of 1994.

4. Writ Petition No. 12152 of 2016 is partly allowed. The Order passed in Revision Application No. 63 of 2016 in Exhibit No. 74 in RAE. & R. Suit No. 54/176 of 1994 filed by Petitioner/Org. Defendant No.2 is hereby set aside and application

Exhibit "74" is allowed. The Petitioner/Org. Defendant No.2 is hereby permitted to amend his Written Statement dated 29th July 2011, (Exhibit "36"), as per the amendment as prayed for in the Schedule annexed at Exhibit "74". For completeness of record, the Schedule of amendment to Exhibit "74" is annexed to this Order as **Annexure 'A'**.

5. Paragraphs 8 and 16 of the Additional Written Statement of Petitioner dated 6.7.2015 at Exhibit "57" is restored and retained. In view of Exhibit "57" being allowed, Paragraphs Nos. 1 to 7, 9 to 15 and 17 to 24 of Exhibit "57" shall be deleted. For completeness of record the said paragraphs 8 and 16 of Exhibit "57" are annexed to this Order as **Annexure 'B'**.

6. Though the Order dt. 02.01.2024 below Exhibit "328" in the Suit or the Revision filed by the Respondent No.2 is not the subject matter of this Petition, with a view to obviate further litigation, and keeping all the contentions of Petitioner about the merits of the amendment sought by application Exhibit "328", Revision Application No. 15 of 2024, filed by Respondent No. 2/Org. Plaintiff No.2 against the order dated 2.1.2024 passed in Exhibit "328", before the Appellate Bench of the Small Causes Court, Bandra Branch is allowed and leave is granted to the Respondent No. 2/Plaintiff No.2 to amend the plaint in terms of the Schedule annexed to the application Exhibit "328". For completeness of record, the Schedule of amendment to Exhibit "328" is annexed to this Order as **Annexure 'C'**. Amendment to be carried out within 14 days.

7. Leave is granted to the Petitioner/Org. Defendant No.2, to file Additional Written Statement, to the Plaint, as amended in terms of the Schedule annexed to Exhibit "328". The Petitioner shall file such Additional Written Statement within two weeks from the date of service of the Plaint to be amended in accordance with the Schedule to the Application Exhibit "328".

8. Leave is granted to the Petitioner! Original Defendant No. 2 to further amend his Written Statement dated 29.7.2011, by incorporating therein the proposed amendment, as per the Schedule, annexed to this Order as Annexure 'D'. Since, by this amendment, Petitioner is challenging the derivative title of Plaintiff No.2, the Plaintiffs are permitted to add the following paragraphs after para 16 of the Plaint.

16A "Since, the Defendant No.2 has challenged the derivative title of Plaintiff No.2 by amending the written statement, the Plaintiffs are also entitled to a decree of eviction on that ground. "

The Petitioner shall carry out the said amendment and serve the amended Written Statement on the Advocate for the Plaintiff appearing in the Trial Court within two weeks from today.

9. The Petitioner is directed to file Additional Written Statement to the aforesaid paragraph 16A added in the Plaint, if the Petitioner so desires,

within two weeks from the date on which the amended Plaint is served on the Advocate for the Petitioner in the Trial Court.

10. In view of the order dated 5.8.2022, passed below Exhibit "1" in R.A.E.& R. Suit No. 54/176 of 1994 whereby the evidence of P.W.1 is closed, which Order has attained finality, the Petitioner/Original Defendant No. 2 in Writ Petition No. 1833 of 2024 unconditionally withdraws the said Writ Petition. However, it is clarified that if the Respondent No. 2 / Plaintiff No.2 desires to examine any other witness for proving the documents produced by P.W.1, he shall be at liberty to do so. It is further clarified that all contentions of both the parties regarding the existence of and contents of such documents and admissibility of such documents and contentions of the parties in respect of relevancy of such documents are expressly kept open to be agitated before the Trial Court.

11. Revision Application No. 35 of 2016 seeks to challenge the order, allowing the Application Exhibit 44 in the suit, whereby the Respondent No.2 is impleaded as Plaintiff No. 2. The amendment has already been carried out and the Respondent No.2 has already been brought on record as Plaintiff No.2. Hence, the Revision Application No. 35 of 2016 is disposed of in terms of this Order by keeping all contentions of the Petitioner regarding the derivative title claimed by the Respondent No.2 as an assignee of the Respondent No. 1 and all rival contentions about the derivative title of Respondent No.2 are kept open to be agitated in the Suit.

12. Though the hearing of R.A.E.& R. Suit No. 54/176 of 1994 pending before the Court of Small Causes Bandra Branch is already expedited by order dated 28.11.2023 passed in Writ Petition No. 5010 of 2022, in view of the fact that the Plaint is allowed to be amended by allowing application Exhibit "328" in terms of this Order subject to the objections of the Petitioner as recorded above and since the Petitioner is allowed to file Additional Written Statement to the amended Plaint and is also allowed to amend the Written Statement in terms of **Annexure 'D'** to this Order, the time to dispose of the Suit is extended and the Suit shall be disposed of within one year from the date of this Order.

13. Writ Petitions be disposed off accordingly.

2. For ease of reference, the same is also scanned and reproduced hereinbelow :

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

(1) WRIT PETITION NO. 12152 OF 2016

Romesh Sharma

--Petitioner

Versus

M/s. Shree Raj Shrushti Residency

Pvt Ltd

--Respondent

(2) WRIT PETITION ST NO. 1833 OF 2024

Romesh Sharma

--Petitioner

Versus

M/s. Shree Raj Shrushti Residency

Pvt Ltd

--Respondent

Mr. G. S. Godbole, Senior Advocate with Adv. Ms. Eventa
Gonsalves and Adv. Reyden Gonsalves for the Petitioner.

Adv. Khan Javed Akhtar for Respondent Nos. 1 & 2 in W.P.
NO.12152 of 2016.

Adv. Bipin Joshi for Respondents No.1 and 2 in W.P. No. 1833 of
2024.

CORAM : RAJESH PATIL, J.

DATE :- 22ND MARCH, 2024

MINUTES OF ORDER

1. Rule. Rule made returnable forthwith and Petitions taken up for hearing. Respective Advocates for the Respondents No.1 and 2 waive service of Rule. In view of the nature of Orders which are impugned in the Petition and the fact that Respondent Nos. 3 to 5 had not appeared before the Appellate Bench of Court of Small Causes, Mumbai (Bandra Branch) in Revision Applications No. 35 of 2015, 122 of 2015 and 63 of 2016 and the fact that they are no longer contesting R.A.E. & R. SUIT No. 54/176 of 1994; service of Rule on the said Respondent Nos. 3 to 5 is waived.
2. Challenge in W.P No. 12152 of 2016 is to common Judgment and Order dated 19.9.2016 passed by Appellate Bench of the Court of Small Causes at Mumbai (Bandra Branch) thereby dismissing Revision Application Nos. 35 of 2015, 122 of 2015 and 63 of 2016 all filed by the Petitioner/ Original Defendant No. 2.
3. Challenge in W.P No. 1833 of 2024 is to the impugned Order dated 20th January, 2022 passed by the Court of Small Causes at Mumbai (Bandra Branch) thereby dismissing Application Exhibit 277 in R.A.E & R Suit No. 54/176 of 1994.

4. Writ Petition No. 12152 of 2016 is partly allowed. The Order passed in Revision Application No. 63 of 2016 in Exhibit No. 74 in R.A.E. & R. Suit No. 54/176 of 1994 filed by Petitioner /Org. Defendant No. 2 is hereby set aside and application Exhibit "74" is allowed. The Petitioner /Org. Defendant No. 2 is hereby permitted to amend his Written Statement dated 29th July 2011, (Exhibit "36"), as per the amendment as prayed for in the Schedule annexed at Exhibit "74". For completeness of record, the Schedule of amendment to Exhibit "74" is annexed to this Order as Annexure 'A'.
5. Paragraphs 8 and 16 of the Additional Written Statement of Petitioner dated 6.7.2015 at Exhibit "57" is restored and retained. In view of Exhibit "57" being allowed, Paragraphs Nos. 1 to 7, 9 to 15 and 17 to 24 of Exhibit "57" shall be deleted. For completeness of record the said paragraphs 8 and 16 of Exhibit "57" are annexed to this Order as Annexure 'B'.
6. Though the Order dt. 02.01.2024 below Exhibit "328" in the Suit or the Revision filed by the Respondent No. 2 is not the subject matter of this Petition, with a view to obviate further litigation, and keeping all the contentions of Petitioner about the merits of the amendment sought by application Exhibit "328", Revision

Application No. 15 of 2024, filed by Respondent No. 2 /Org. Plaintiff No. 2 against the order dated 2.1.2024 passed in Exhibit "328", before the Appellate Bench of the Small Causes Court, Bandra Branch is allowed and leave is granted to the Respondent No. 2/Plaintiff No. 2 to amend the plaint in terms of the Schedule annexed to the application Exhibit "328". For completeness of record, the Schedule of amendment to Exhibit "328" is annexed to this Order as Annexure 'C'. Amendment to be carried out within 14 days.

7. Leave is granted to the Petitioner /Org. Defendant No. 2, to file Additional Written Statement, to the Plaint, as amended in terms of the Schedule annexed to Exhibit "328". The Petitioner shall file such Additional Written Statement within two weeks from the date of service of the Plaint to be amended in accordance with the Schedule to the Application Exhibit "328".
8. Leave is granted to the Petitioner/ Original Defendant No. 2 to further amend his Written Statement dated 29.7.2011, by incorporating therein the proposed amendment, as per the Schedule, annexed to this Order as Annexure 'D'. Since, by this amendment, Petitioner is challenging the derivative title of Plaintiff



No.2, the Plaintiffs are permitted to add the following paragraphs after para 16 of the Plaint.

16A "Since, the Defendant No.2 has challenged the derivative title of Plaintiff No.2 by amending the written statement, the Plaintiffs are also entitled to a decree of eviction on that ground."

The Petitioner shall carry out the said amendment and serve the amended Written Statement on the Advocate for the Plaintiff appearing in the Trial Court within two weeks from today.

9. The Petitioner is directed to file Additional Written Statement to the aforesaid paragraph 16A added in the Plaint, if the Petitioner so desires, within two weeks from the date on which the amended Plaint is served on the Advocate for the Petitioner in the Trial Court.

10. In view of the order dated 5.8.2022, passed below Exhibit "1" in R.A.E.& R. Suit No. 54/176 of 1994 whereby the evidence of P.W.1 is closed, which Order has attained finality, the Petitioner/ Original Defendant No. 2 in Writ Petition No. 1833 of 2024 unconditionally withdraws the said Writ Petition. However, it is clarified that if the Respondent No. 2 / Plaintiff No.2 desires to examine any other witness for proving the documents produced by

P.W.1, he shall be at liberty to do so. It is further clarified that all contentions of both the parties regarding the existence of and contents of such documents and admissibility of such documents and contentions of the parties in respect of relevancy of such documents are expressly kept open to be agitated before the Trial Court.

11. Revision Application No. 35 of 2016 seeks to challenge the order, allowing the Application Exhibit 44 in the suit, whereby the Respondent No. 2 is impleaded as Plaintiff No. 2. The amendment has already been carried out and the Respondent No. 2 has already been brought on record as Plaintiff No. 2. Hence, the Revision Application No. 35 of 2016 is disposed of in terms of this Order by keeping all contentions of the Petitioner regarding the derivative title claimed by the Respondent No. 2 as an assignee of the Respondent No. 1 and all rival contentions about the derivative title of Respondent No. 2 are kept open to be agitated in the Suit.

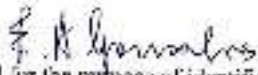
12. Though the hearing of R.A.E.& R. Suit No. 54/176 of 1994 pending before the Court of Small Causes Bandra Branch is already expedited by order dated 28.11.2023 passed in Writ Petition No. 5010 of 2022, in view of the fact that the Plaintiff

allowed to be amended by allowing application Exhibit "328" in terms of this Order subject to the objections of the Petitioner as recorded above and since the Petitioner is allowed to file Additional Written Statement to the amended Plaint and is also allowed to amend the Written Statement in terms of Annexure 'D' to this Order, the time to dispose of the Suit is extended and the Suit shall be disposed of within one year from the date of this Order.

13. Writ Petitions be disposed off accordingly.

DATED THIS 28th DAY OF MARCH, 2024.

ADVOCATES FOR PETITIONER
EVENTIA GONSALVES
& REYDEN GONSALVES
(Writ Petition No. 12152 of 2016 &
Writ Petition No. 1833 of 2023)


Signed for the purpose of identification

ADVOCATE FOR RESPONDENTS
NOS. 1 & 2
KILAN JAVED AKHTAR
(Writ Petition No. 12152 of 2016)


Signed for the purpose of identification

ADVOCATE FOR RESPONDENTS
NOS. 1 & 2
HIPIN JOSHI
(Writ Petition No. 1833 of 2023)


Signed for the purpose of identification

3. Order in terms of the minutes of the order.
4. All statements are accepted as an undertakings to this Court and all undertakings are also accepted.
5. Writ Petition No.12152 of 2016 and Writ Petition (St) No. 1833 of 2024 are disposed of in terms of the minutes of the order.

[RAJESH S. PATIL, J.]