

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7861 OF 2024

Usha Ajit Jhaveri

....Petitioner
(Orig. Revn.Applicant/
Orig. Respondent)

: **Versus** :

Rajendra Kumar Upadhyaya

....Respondent
(Orig. Plaintiff)

Mr. Dakshesh Vyas i/by. **Mr. Nishant Vyas** a/w. **Mr. Parth Choudhary** and **Mr. Yagnesh Vyas**, for the Petitioner.

Ms. Subra Karmarkar, for the Respondent.

CORAM : **SANDEEP V. MARNE, J.**

Dated : **4 DECEMBER 2024.**

P.C. :

1) The petition challenges order dated 30 March 2024 dismissing Revision Application No.311/2023 filed by the Petitioner and confirming the order dated 4 September 2023 passed by the Small Causes Court allowing application filed by the Plaintiff at Exhibit-43.

2) All that is done by way of order dated 4 September 2023 by the Trial Court is merely to take on record additional Affidavit

dated 14 June 2023 for bringing subsequent events on record. The said Affidavit is tendered by the Plaintiff in Defendant's application at Exhibit-27 filed under the provisions of Section 10 of the Civil Procedure Code seeking stay of R.A.E. and R. Suit No.683/1034 of 2009 till decision of the H.C. Suit No.59 of 2005 (*now numbered as S.C. Suit No.5703 of 2005*). It appears that the said application at Exhibit-27 was initially allowed by the Trial Court by order dated 8 May 2014. However, this Court has remanded the said application for fresh decision by order dated 26 July 2019 and permitted the parties to raise all possible contentions while deciding the said application. Consequent to the liberty granted by this Court for raising all contentions, Plaintiff sought to place on record additional Affidavit dated 14 June 2022 merely to bring on record subsequent events during pendency of the application at Exhibit-27. Plaintiff has brought on record events such as decision of preliminary issue of jurisdiction in Suit No.5703 of 2005 by order dated 27 November 2014, the fact that issues in the suit are yet to be framed and the factum of Plaintiff in Suit No.5703/2005 amending the plaint so as to incorporate a challenge to the documents of title executed in favour of the Plaintiff in R.A.E. & R. Suit No.683/1034 of 2009. By way of said Affidavit, Plaintiff has sought to bring on record his contention that the nature of Suit No.5703/2005 has now changed from that of specific performance to a Suit for declaration and that the Suit is yet to proceed for hearing. In my view, this information is necessary for the purpose of deciding the application at Exhibit-27. Whether the Plaintiff in R.A.E. & R. Suit No.683/1034 of 2009 can rely upon the averments made in the additional Affidavit in absence of pleadings in the plaint, is something which the Trial Court will decide at the time

of disposing off application at Exhibit-27. The Petitioner/Defendant has already been granted an opportunity to file rejoinder to the additional affidavit filed by the Plaintiff.

3) In my view, therefore no serious error can be traced in the impugned orders passed by the Trial and the Appellate Courts. Filing of the present petition appears to be gross abuse of process of law. Therefore, the petition is dismissed with costs of Rs.25,000/- to be paid by the Petitioner/Defendant within a period of 2 weeks from today. The Petitioner/Defendant shall be at liberty to file rejoinder to the additional Affidavit in terms of the order dated 4 September 2024 within a period of 2 weeks subject to payment of costs as directed above.

[SANDEEP V. MARNE, J.]

Note : Corrections are carried out in para-3 of the order only pursuant to speaking to minutes order dated 9 December 2024. The rest of the order remains the same.