

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

WRIT PETITION NO.12962 OF 2024

1. Mr. Sudhakar Pundalik Shetye

**}Petitioner
(Orig. Appellant/Defendant)**

: Versus :

1. Mr. Arvind Pandurang Nagvekar
(since deceased)

1a. Mrs. Rupali Pandurang Nagvekar
and Ors.

}....Respondents

Mr. Sujeet Kurup, for the Petitioner.

Mr. Pradeep Thorat a/w. Ms. Aditi Naikare, for Respondent Nos.2 and 3.

Mr. Vinay Nair i/by. Mr. Arun Panicker, for Respondent No.1(a).

CORAM : SANDEEP V. MARNE, J.

Dated : 16 October 2024.

P.C. :

1) The petition challenges the order dated 10 August 2023 passed by the learned Judge of the Small Causes Court allowing application for review at Exhibit-184 and recalling the order dated 14 July 2023 by which Plaintiffs' application at Exhibit-159 for discarding additional Written Statement was rejected. By allowing the Review Application at Exhibit-184 by order dated 10 August 2023, the learned Judge of the Small Causes Court has partly allowed the application at Exhibit-159 and directed striking out of only averments pertaining to applications at Exhibit-26 & 105. Petitioner filed Revision Application

No.251/2023 challenging the order dated 10 August 2023, which has been dismissed by the Appellate Bench by judgment and order dated 16 August 2024, which is also the subject matter of challenge in the present petition.

2) As the hearing of the petition progressed, this Court noticed passing of conflicting orders by two different Benches of the Appellate Court. When Plaintiffs' application at Exhibit-159 was earlier rejected by order dated 14 July 2023, he adopted twin remedies in respect of the said order. On 2 August 2023, Plaintiffs filed application at Exhibit-184 seeking review of order dated 14 July 2023. Two days later, Plaintiffs were advised to file Revision Application No.225/2023 before the Appellate Bench of the Small Causes Court challenging the order dated 14 July 2023. When the application for review was taken up for decision by the Trial Court, it is unknown whether the Trial Court was made aware of the fact that the order under review was already challenged in revision before the Appellate Court. Be that as it may. The Trial Court proceeded to partly allow the Review Application and modified the order dated 14 July 2023 by allowing application at Exhibit-159 by order dated 10 August 2023. After about a month, the Revisional Court took up Revision Application No.225/2023. The Plaintiffs did not even bother to inform the Appellate Bench that the Review Application was already allowed and the order dated 14 July 2023 no longer survived. The Advocate for the Plaintiffs pressed and argued Revision Application No.225/2023 and the Appellate Bench proceeded to dismiss the same by order dated 6 September 2023. Thus, Revision preferred against non-existent order dated 14 July 2023 came to be dismissed by the Appellate Bench on 6 September 2023.

3) The Defendants were required to challenge order dated 10 August 2023 passed in Revision Application by filing Revision Application No. 251/2023. It appears that the said Revision Application No.251/2023 came to be heard by a different Bench of Small Cause Appellate Court than the one which had decided Revision Application No.225/2023. Without noticing that the Coordinate Bench had already upheld the right of the Defendant to incorporate entire pleadings in the additional Written Statement, the Division Bench passed contradictory order on 16 August 2024 dismissing Revision Application No.251/2023 by holding that Defendants were not entitled to incorporate the entire averments in the additional Written Statement and that the averments pertaining to applications at Exhibit-26 and 105 are required to be discarded.

4) This is how two conflicting decisions are taken by two distinct Benches of the Appellate Bench of the Small Causes Court.

5) In the present petition, Defendants have challenged only the order passed in Review Application on 10 August 2023 and order passed by the Appellate Bench on 16 August 2024 in Revision Application No.251/2023. The order dated 6 September 2023 passed in favour of the Defendants is obviously not challenged by them. Plaintiffs have also not felt any need to challenge order dated 6 September 2023 since their Review Application has been allowed and order dated 14 July 2023 no longer survives. Thus unique conundrum is required to be resolved by ensuring that there is uniformity in the views taken by the Courts in the present proceedings. With a view to ensure the same, it would be necessary to set aside the order dated 10

August 2023 passed by the Trial Court in Review Application at Exhibit-184 and by restoring the said Review Application. This would make the order dated 16 August 2024 passed in Review Application No.251/2023 infructuous. In order to enable the Trial Court to effectively decide the Review Application at Exhibit-184, the order dated 6 September 2023 passed in Revision Application No.225/2023 is also required to be set aside. I am conscious of the position that this Court is setting aside the order dated 6 September 2024, which is not challenged in the present petition and the defendants cannot be even forced to challenge the order dated 6 September 2023, which is in their favour. However, this Court is adopting rather unusual course of action in setting aside an order which is not challenged in the present petition in exercise of extraordinary jurisdiction under Article 227 of the Constitution of India since the order dated 6 September 2023 ultimately arises out of the same proceedings between the parties.

6) I accordingly proceed to pass the following order :

(i) The order dated 16 August 2024 passed by the Appellate Bench of the Small Causes Court in Revision Application No.251/2023 is set aside.

(ii) The order dated 6 September 2023 passed by the Appellate Bench of the Small Causes Court in Revision Application No.225/2023 is set aside. The Revision Application No.225/2023 is accordingly permitted to be withdrawn since the application for review at Exhibit-184 is being restored for fresh decision.

(iii) The order dated 10 August 2023 passed by the Learned Judge of the Small Causes Court on application at Exhibit-184 is set aside. The application at Exhibit-184 is restored on the file of the Learned Judge of the Small Causes Court who shall proceed to decide the same afresh without being influenced in any manner either by the observations made by this Court in the present order or by the observations made by the Appellate Bench in the orders dated 16 August 2024 or 6 September 2023. All contentions of the parties are expressly kept open.

7) With the above directions, the Writ Petition is **disposed of**.

NEETA
SHAILESH
SAWANT

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by NEETA
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[SANDEEP V. MARNE, J.]