

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

CIVIL REVISION APPLICATION NO.323 OF 2024

M/s. Simshah Estates and Trading
Company Pvt. Ltd.

....Applicant

V/S

Om Construction Pvt. Ltd. & Ors.

....Respondents

Mr. Bharucha a/w Mr. Rohit Lalwani, Ms. Aayushi Chauhan *for the Applicant.*

Mr. Nilesh Das *for Respondent nos.1 to 4.*

Mr. Shobhit Shukla i/b Mr. Ashok Pande *for Respondent No.5.*

CORAM: SANDEEP V. MARNE, J.

DATE : 30 JULY 2024.

P.C.:

1 By this Civil Revision Application, Applicant challenges order dated 11 March 2024 passed by the Appellate Bench of the Small Causes Court dismissing Miscellaneous Appeal No.82 of 2023 and confirming the order dated 26 August 2022 passed by the Small Causes Court on Application at Exhibit-91. The Small Causes Court rejected the application filed by the Applicant for its impleadment as Plaintiff in the suit and for effecting amendment to the Plaint.

2 I have heard Mr. Bharucha, the learned counsel appearing for Applicant, Mr. Das, the learned counsel appearing for Respondent Nos.1 to 4 and Mr. Shukla, the learned counsel appearing for Respondent No.5.

3 After having considered the submissions canvassed by the learned counsel appearing for parties, it is seen that RAD Suit No.1387 of 2013 is instituted by M/s. Simshah Estates and Trading Company Pvt. Ltd. During pendency of the suit it appears that a Scheme for Merger for Merger of four companies including M/s. Simshah Estates and Trading Company Pvt. Ltd. with Navin Nurseries Pvt. Ltd. (Transferee Company) has been accepted by the National Company Law Tribunal, Mumbai Bench by order dated 23 October 2019. Thus the original Plaintiff M/s. Simshah Estates and Trading Company Pvt. Ltd. has merged into the transferee company Navin Nurseries Pvt. Ltd.. Therefore the transferee company filed application at Exhibit-91 for its impleadment as Plaintiff and for consequential amendments to the Plaint. The Small Causes Court has proceeded to reject the application by order dated 26 August 2022 which is confirmed in Appeal by the Appellate Bench vide order dated 11 March 2024.

4 Perusal of orders passed by the Small Causes Court and its Appellate Bench would indicate that while rejecting the application, both the Courts have unnecessarily gone into merits of the suit. Both the Courts accept the position that on account of acceptance of Scheme of Merger, the original Plaintiff no longer survives and what survives today is only the transferee company. Whether by virtue of Scheme of Merger, the transferee company would also acquire tenancy rights in respect of the suit premises is an issue which is to be decided on merits at the time of trial of the suit. While deciding the application for impleadment and amendment, the Small Causes Court could not have gone into merits of the suit and decided whether tenancy survives after the Scheme of Merger. In my view, under

clause 7 of the Sheme of Merger, the transferee company is entitled to continue the suit instituted by the original Plaintiff. Therefore the application at Exhibit-91 ought to have been allowed by the Small Causes Court, leaving the issues of acquisition of rights in relation to the suit premises open to be decided at the time of trial of the suit.

5 Consequently the order dated 26 August 2022 passed by the Small Causes Court and order dated 11 March 2024 passed by the Appellate Bench are set aside. Application at Exhibit-91 stands allowed. Necessary amendments as per the schedule be effected in the Plaint within a period of four weeks from today. Needless to say that the Defendants would be entitled to file Additional Written Statement once the amendment is carried out.

6 With the above directions, the Civil Revision Application is allowed and **disposed of**.

(SANDEEP V. MARNE, J.)

Digitally signed
by
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KATKAM
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2024.08.16
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