

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.4679 OF 2024

Maneesh Bawa and others ... Petitioners
Vs.
Sanjay Navinchandra Sutaria ... Respondent

Mr. J. S. Kini a/w. Mr. Aum Kini i/b. Ms. Sapna Krishnappa for Petitioners.
Mr. Dhruva Gandhi a/w. Mr. Parag Shah & Ms. Dhvani Daftary for Respondent.

CORAM : MANISH PITALE, J.
DATE : OCTOBER 14, 2025

P.C. :

. Heard learned counsel for the parties.

2. This petition arises out of an order dated 06.05.2023 passed by the Court of Small Causes at Mumbai (Appellate Bench), whereby a revision application filed by the petitioners was dismissed, thereby confirming an order dated 09.10.2021 passed by the Court of Small Causes at Mumbai, below exhibit-14 in R.A.D. Suit No.703 of 2019, whereby an application filed by the petitioners under Order VII, Rule 11 of the Code of Civil Procedure, 1908 (CPC) was rejected.

3. The respondent had filed a suit bearing R.A.E. Suit No.1361 of 2017 for eviction of the petitioners, wherein an *ex-parte* decree was passed against the respondent. It is the case of the respondent that he was unaware about the said decree and in that backdrop, the aforesaid suit bearing R.A.D. Suit No.703 of 2019 on the allegation that he was being restrained from enjoying the tenanted properties. In that light, the respondent in the aforesaid suit prayed for a declaration that he was the lawful tenant of the three structures, with a further prayer for a direction to the petitioners to handover possession of the said structures to the

respondent. Since the structures, in the meantime, were demolished, the respondent further prayed for a direction to the petitioners to reconstruct the said structures and to provide access to him.

4. It is also a matter of record that the respondent filed an application under Order IX, Rule 13 of the CPC for setting aside the *ex-parte* decree and he also filed a substantive appeal to challenge the *ex-parte* decree.

5. During the pendency of the suit filed by the respondent, an application for amendment was moved, which was allowed. As a consequence, prayer clause (a-i) was added to the aforesaid suit of the respondent. By the said amended prayer, the respondent prayed for setting aside the *ex-parte* decree dated 01.09.2018 passed in the suit filed by the petitioners against him.

6. The petitioners moved the aforesaid application under Order VII, Rule 11 of the CPC in the backdrop of the aforesaid specific prayer added by way of amendment. It was contended that since the respondent had already filed an application for setting aside *ex-parte* decree and he had also filed the substantive appeal to challenge the *ex-parte* decree, the aforesaid suit filed by the respondent, *inter alia*, specifically praying for setting aside of the very same decree, could not be permitted as the respondent was not entitled to pursue three remedies for the same cause.

7. During the course of arguments, it came to light that along with this petition, a copy of the impugned judgement and order dated 06.05.2023 was inadvertently not annexed and therefore, a photocopy of the same was tendered. The same is taken on record and marked 'X'.

8. The subsequent events were also brought to the notice of this Court to the effect that the substantive appeal filed by the respondent, challenging the *ex-parte* decree was allowed; the decree was set aside

and the matter stood remanded to the Small Causes Court for fresh consideration. This Court is further informed that the respondent moved an application in the said remanded suit, seeking restoration of possession and the said application has been heard. It is kept for orders on 28.10.2025.

9. This Court is of the opinion that in the light of the substantive appeal filed by the respondent to challenge the *ex-parte* decree being allowed; the decree being set aside; and the matter being remanded to the Small Causes Court for consideration afresh renders prayer clause (a-i) in the suit filed by the respondent infructuous. This takes away the wind out of the arguments sought to be raised on behalf of the petitioners in this petition while challenging the impugned judgement and order.

10. This Court has perused the other prayers as were originally framed in the suit filed by the respondent. It cannot be said that the suit would be barred by Order VII, Rule 11 of the CPC, so long as the respondent intends to pursue the prayers as originally framed in the suit.

11. Hence, this Court finds that in the light of the subsequent events, the challenge raised by the petitioners to the impugned judgement and order is rendered infructuous and that the petition can be disposed of as such.

12. In view of the above, the petition is disposed of.

13. Pending applications, if any, also stand disposed of.

(MANISH PITALE, J.)