

**2008-(BO1)-GJX-0605-BOM**

Borivali Sagar Co-op. Hsg. Society Ltd., Appellant

Vs.

Shree Sagar Builder And Another, Respondents.

**Court :**

**Decided On :**

February 12, 2008

**Judge(s) :**

A S Oka

**Judgment :**

BORIVALI SAGAR CO-OP. HSG. SOCIETY LTD., APPELLANT v. SHREE SAGAR BUILDER AND ANOTHER, RESPONDENTS.

First Appeal No. 2255 of 2007, decided on February 12, 2008.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

Counsel : Mr. R. Narula - Appellant.

Mr. Viveka Kantawala - Respondent.

JUDGMENT

The First Appeal is already admitted for final hearing. The learned counsel for the first Respondent pointed out that one of the grounds of challenge in the Appeal is that the impugned Judgment was signed by the learned trial Judge after he ceased to be in service. He submitted that without going into any controversy, the impugned order be set aside and the trial court be directed to decide the suit afresh as the evidence is already recorded.

The learned counsel for the Appellant has no objection if the said suggestion is accepted.

Evidence is already adduced by the parties and therefore, now what remains to be done is hearing of the arguments of the counsel appearing for the parties.

Considering what is stated above, I pass the following order :

(i) Impugned Judgment and Decree dated 18th April, 2007 is quashed and set aside and L.C. Suit No. 4728 of 1996 is restored to the file of the City Civil Court at Mumbai.

(ii) The parties are directed to appear before the learned Principal Judge of the City Civil Court, Mumbai on 25th February, 2008 at 11.00 a.m.

(iii) The learned Principal Judge, City Civil Court will assign the suit to the appropriate court for hearing and final disposal.

(iv) The trial court will hear the arguments and decide the suit as expeditiously as possible and in any event on or before 6th May, 2008.

(v) All contentions of the parties on merits of the suit are expressly kept open.

(vi) Appeal is partly allowed in above terms with no order as to costs.

(vii) The parties and the trial court to act upon an authenticated copy of this order.

(viii) In view of disposal of the Appeal, Civil Application Nos. 4462/2007 and 52 of 2008 do not survive and the same are rejected.