IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 577 OF 2010

RUKHANA ASSOCIATES)
A partnership firm having its principal)
place of business at Pheroze Sadan,)
3rd Floor, Plot No. 10, Sion – Matunga)
Road, Mumbai – 400 022.) ... ... Appellant.

Versus

E-SQUARE LEISURE PVT. LTD.)
(Erstwhile Ganatra Hotels Pvt. Ltd.))
A private limited company having its)
registered office at Lens View Bldg., 6th)
Floor, Viradesai Road, Opp. Country)
Club, Andheri West, Mumbai – 400 053.) ... ... Respondent.

Mr. A. Y. Sakhare, Sr. Advocate with Mr. V. P. Sawant &
Ms. Usha Rahi i/by M/s. Mayur Narendra & Co. for the Appellant.
Mr. Vivek Kantawala with Ms. Sneha Nanandkar i/by M/s. Vivek Kantawala & Co., for the Respondent.

CORAM : A. M. KHANWILKAR and
A. A. SAYED, JJ.

DATED : 2ND JULY, 2010.

ORAL JUDGMENT (Per A. M. Khanwilkar, J.):

Heard learned Counsel for the parties.

2. Admit.

3. By consent, the appeal is taken up for final disposal forthwith.

4. The appeal arises out of the judgment and decree dated 20th February, 2010 passed by the Civil Judge, Senior Division, Pune, in Special Civil Suit No. 667 of

2004. The appellant/plaintiff filed the said suit for specific performance of actionable claim and declaration. The said suit has been dismissed by the trial Court by passing the following order :

> "1. The suit is dismissed.
>
> 2. The Plaintiff to pay the deficit Court fees of Rs.1,00,225/- within a period of one month from the date of decree and in default of payment of Court fees by the plaintiff, precept be issued to the Collector to recover the deficit court fees from the plaintiff as arrears of land revenue.
>
> 3. Decree be drawn accordingly."

For the nature of the order that we propose to pass and considering the principal grievance made on behalf of the appellant, it is not necessary to advert to all the factual matrix of the case. The relevant facts on the basis of which the appeal can be disposed of are that the suit proceeded for trial before the Judge Mr. Chilbule. He recorded the evidence of the witnesses. On 25th January, 2010, the oral arguments were advanced by the parties before the abovenamed Judge, who had recorded the evidence. The said Judge directed the parties to file gist of oral arguments and adjourned the case to 30th January, 2010. In compliance of the said direction, the parties filed their gist of oral arguments. However, before the judgment was pronounced, the said Judge was transferred and in his place the present Judge Mr. A. P. Raghuvanshi, Civil Judge, Senior Division, was appointed. Naturally, therefore, the suit was to now proceed before the newly appointed Judge. Accordingly, when the suit appeared on the board of the new Judge, Mr. A.

P. Raghuvanshi, on 11th February, 2010, the Plaintiff through Counsel requested the new Judge to place the matter for oral arguments on a convenient date. However, the Judge was of the opinion that since the gist of oral arguments was already on record, it was unnecessary to place the matter for oral arguments afresh. Admittedly, without placing the matter for oral arguments, the impugned judgment came to be pronounced on 20th February, 2010. It is in this background, the appellant has approached this Court by way of this appeal.

5. The grievance of the appellant is that the requirement of oral arguments could not have been dispensed with by the newly appointed Judge. That was mandatory. The respondent on the other hand contends that since the gist of oral arguments were already placed on record by both the parties, in view of the expansive provision contained in Order XVIII Rule 2(3-A) it was not necessary for the concerned Judge to once again hear the oral arguments before pronouncing the judgment. This is the limited controversy that we are called upon to address at the outset in the present appeal.

6. As aforesaid, it is common ground that oral argument was concluded on 25th January, 2010 before Judge Chilbule, (the predecessor of Mr. A. P. Raghuvanshi, Civil Judge, Senior Division). Before pronouncement of the judgment, Judge Chilbule was transferred. But after the new Judge was appointed in his place (i.e. Judge Mr. A. P. Raghuvanshi) no oral argument was permitted by the new Judge, who eventually pronounced the judgment on 20th February, 2010. That was inspite of the request made by the Counsel appearing for the plaintiff to

place the matter for oral arguments. The question is whether the course adopted by the new Judge (Mr. A. P. Raghuvanshi) can be said to be permissible in law ? It is rudimentary that the Court has to provide fair opportunity to both the parties and consider their oral arguments. The requirement of hearing oral arguments by the Judge, who finally pronounces or writes the Judgment, is not only intrinsic in the scheme of principles of natural justice but is mandatory. For, on plain language of Section 33 of the Code of Civil Procedure, it is obvious that the judgment can be pronounced only after the case has been heard. That means, after the oral arguments are heard. Indeed, this provision refers to the term "Court", but this word will have to be construed as "Judge" who finally pronounces or writes the Judgment. Further, Order XX Rule 1 also envisages that the Court (read Judge), after the case has been heard, shall pronounce Judgment in the manner provided therein. Notably, Rule 2 of Order XX is the only exception to the Rule that the Judge who has heard the oral arguments should himself pronounce the Judgment. In other words, the Judgment can be pronounced only by the Judge, who has heard the oral arguments. In that, Rule 2 envisages that a Judge shall pronounce a judgment written, but not pronounced, by his predecessor. That is not the case on hand. Admittedly, in the present case the Judge who had heard the oral arguments was transferred before pronouncing the Judgment or for that matter writing the Judgment. In such a situation, the new Judge has had no option but to hear the oral arguments afresh and only then pronounce the Judgment. The fact that the parties have already filed written submissions or gist of oral arguments

advanced before the predecessor Judge, is of no avail. In as much as, submission of written arguments cannot supplant the requirement of oral arguments and cannot extricate or dispense with the same. The provision pressed into service by the Counsel for the respondent by no stretch of imagination dispenses with the requirement of oral arguments. We think it apposite to advert to the said provision, namely, Order XVIII Rule 2(3-A), which reads thus:

> "(3-A) Any party may address oral arguments in a case, and shall, before he concludes the oral arguments, if any, submit if the Court so permits concisely and under distinct headings written arguments in support of his case to the Court and such written arguments shall form part of the record."

This provision has come into force after the amendment of 2002. Going by the plain language of this provision, there is nothing to suggest that the process of oral arguments is completely dispensed with. On the other hand, filing of written arguments is not mandatory and is subject to such order to be passed by the Court. In other words, the provision is an enabling provision authorizing the Court to issue direction to the parties to file written arguments in support of their case. That, however, is in addition to the oral arguments already advanced or to be advanced in the said case. If such written arguments in support of the case is filed by the parties, the same would form part of the record of the case. Even so, it would not dispense with the requirement of oral arguments to be advanced before the Judge who is expected to pronounce the Judgment. The word "may" in the opening part of this provision does not mean that oral arguments are optional. We

cannot be oblivious to the other provisions referred to hitherto which makes it mandatory to hear the oral arguments before pronouncement of the Judgment by the Judge concerned. At the same time, the expression “shall” occurring therein is intended to make “filing of the written arguments before the conclusion of the oral arguments” mandatory, and subject to the permission of the Court. Suffice it to observe that the oral arguments are indispensable.

7. Taking any view of the matter, we find substance in the grievance made by the learned Counsel for the appellant that the judgment under appeal suffers from the manifest non-compliance of the mandatory procedure by the new Judge before pronouncing the judgment. On this count alone the judgment under appeal deserves to be set aside and the parties relegated before the trial Court for rehearing of the oral arguments. The trial Court will have to offer opportunity to both the parties to advance their oral arguments and only thereafter pronounce the judgment on the basis of the said oral arguments and the material on record including the written submissions already filed by both the parties which form part of the record.

7. Learned Counsel for the respondent was at pains to persuade us to decide the present appeal on merits, as according to him the reliefs claimed by the appellant/plaintiff cannot be countenanced in view of the well settled legal position. We are afraid, it is not possible to accede to this request. The issues that may arise for consideration including maintainability of the relief, if any, will have to be addressed by the trial Court in the first instance-so that the aggrieved party

may have remedy of at least one appeal before the appellate forum, besides the appellate Court will have the advantage of the opinion of the trial Court on the contentious issues. Understood thus, in our opinion, this appeal ought to succeed. We, therefore, proceed to pass the following order:

-: **O R D E R :-**

(a) The impugned judgment and decree dated 20th February, 2010 passed by the Civil Judge, Senior Division, Pune in Special Civil Suit No. 667 of 2004 is quashed and set aside. Instead, the said suit is restored to the file of the trial Court to its original number to be proceeded from the stage of oral arguments. The trial Court shall endeavor to dispose of the suit as expeditiously as possible and preferably within four months from today.

(b) We make it clear that all questions that may arise for consideration before the trial Court will have to be decided on its own merits and in accordance with law uninfluenced by any observations made in the impugned judgment and decree which stands effaced from the record in terms of the order passed by us today.

(c) The parties shall appear before the trial Court on 23rd July, 2010 at 11.00 a.m. or such other time when the Court resumes the court proceedings, whichever is earlier, when the concerned Judge shall assign appropriate date for hearing oral arguments as may be convenient to him, while ensuring that the suit is finally disposed of

within the specified time.

(d) The interim order, which was operating during the pendency of the suit, shall continue to operate till the disposal of the suit.

(e) No order as to costs.

Sd/- Sd/-

(A. A. SAYED, J.) **(A. M. KHANWILKAR, J.)**