

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**Second Appeal No.84 of 2015
With
Civil Application No.2864 of 2015**

Rameshwar s/o Kashinath Jirwankar. .. **Appellant.**

Versus

Ramchandra s/o Tukaram Ingale. .. **Respondent.**

Shri. Nikhilesh K. Tungar, Advocate, for appellant.

Shri. V.B. Anjanwatikar, Advocate, for respondent.

CORAM: T.V. NALAWADE, J.

DATE : 16th SEPTEMBER 2015

ORDER:

1) The appeal is filed to challenge the judgment and decree of Regular Civil Appeal No.129/2010 which was pending in the Court of the District Judge-1 Parbhani. The appeal was filed by present respondent, original defendant, against the judgment and decree of Regular Civil Suit No.1/2006 which was pending in the Court of the Joint Civil Judge, Junior Division, Parbhani. The suit filed for relief injunction by the appellant, tenant was decided in his favour and that decision is set aside by the first appellate Court. Heard both sides.

2) The submissions made and the reasoning given by the Courts below show that present respondent, landlord never disputed that appellant is occupying the suit premises as tenant. There are allegations against the landlord made by the tenant that the landlord was giving threats and he wanted possession of the suit premises from the tenant. Complaints were given by the tenant to the authority. It appears that after filing of the suit for injunction the landlord filed proceeding for eviction. The landlord is following due procedure and in the past there was allegation that he wanted to take the possession of the property. The submissions and the record of judgments delivered by the trial Court and the first appellate Court in the eviction suit show that the landlord has now got the decree of possession on the ground of default also. It appears that in stead of filing proper proceeding like revision against the decision of the first appellate Court given in eviction matter, the tenant has filed second appeal in this Court. The fact remains that decision given in rent matter has become final as against the present appellant, the tenant.

3) Relief of injunction is discretionary relief. It is held against the tenant that he is defaulter. Further, the landlord is following due course of law for taking possession. In view of all these circumstances the first appellate Court has held that there was no cause of action to the suit and the Court held that discretionary relief cannot be given in favour of such tenant. As it is the exercise of discretion and on the facts and circumstances of this case this Court holds that no substantial question of law as such is involved in the matter. Learned counsel for the tenant, appellant has placed reliance on the case reported as **AIR 2004 SC 4609 (Rame Gowda v. M. Varadappa Naidu)**. The facts and circumstances of each and every case are always different. Relevant facts are discussed by this Court. As there is nothing for formulation of substantial question of law, the appeal stands dismissed. Civil application stands disposed of.

Sd/-
(T.V. NALAWADE, J.)

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