

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.311 OF 2013

1) Shivraj s/o Maharudrappa Wadje,
Age-74 years, Occu:Business,

2) Umakant s/o Shivraj Wadje,
Age-49 years, Occu:Business,

Both R/o-Uma Chowk,
Nanded Road, Udgir,
Tq-Udgir, Dist-Latur.

...APPLICANTS

(Orig. Respondent Nos.1 & 2)

VERSUS

1) Ramchandra s/o Venkatrao Kapse
(Deceased), Through His L.Rs.,
Mulshankar s/o Ramchandra Kapse,
Age-62 years, Occu:Agril.,
R/o-Nalgir, Tq-Udgir, Dist-Latur,
Presently residing at 204, Mohini
Apartment, At Post-Kalva,
Dist-Thane,

2) Malappa s/o Gurubasappa Sarsambe,
(Deceased),
Bandewabai w/o Halappa Sarsambe,
(Deceased), Through L.RS.

2A) Ajit s/o Malappa Sarsambe,
Age-72 years, Occu:Service,
R/o-Brahman Galli, Udgir,
Tq-Udgir, Dist-Latur,

- 2B) Veerkumar s/o Malappa Sarsambe,
Age-58 years, Occu:Service,
R/o-Brahman Galli, Udgir,
Tq-Udgir, Dist-Latur,
- 2C) Sarajanibai w/o Baswaraj Antepa,
Age-56 years, Occu:Household,
R/o-Dubalgundi, Tq-Humanabad,
Dist-Bidar (Karnataka),
- 2D) Kesharbai w/o Kishanrao Rauth,
Age-54 years, Occu:Household,
R/o-Krnaki Kunj, Sitaram Nagar,
Latur, Tq. & Dist-Latur,
- 2E) Kasturabai d/o Malappa Sarsambe,
Deceased through L.Rs.
- 2E-1) Ravi s/o Sidappa Narune,
Age-40 years, Occu:Business,
R/o-C/o- Wadgire Tailore,
Balaji Mandir Road, Humanabad,
Tq. & Dist-Bidar (Karnataka),
- 2-F) Karuna w/o Venkatrao Golampalle,
Age-49 years, Occu:Household,
R/o-As Above,
- 3) Subhas s/o Murgeappa Narwane,
Age-59 years, Occu:Business,
R/o-Phadtar Line, Udgir,
Tq-Udgir, Dist-Latur.

...RESPONDENTS

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Mr. S.V. Chillarge Advocate for Applicants.
Mr. B.R. Warma Advcoate for Respondent No.1.
Mr. M.V. Dhongade Advocate for Respondent Nos.
2-A, 2-B, 2-C, 2-D, 2-E-1 and 2-F.
None present for Respondent No.3 though served.

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CORAM: A.I.S. CHEEMA, J.

DATE : 11TH FEBRUARY, 2015

ORAL ORDER :

1. This Revision Application has been heard finally with consent of learned counsel for both sides.

2. In short the matter as brought by the Applicants is that they are original Respondent Nos.1 and 2 in 1983/RCA/2 which was filed before the Rent Controller, Sub Divisional Officer, Udgir. The proceeding filed was under Section 15 of the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954. The same was filed by original landlord Ramchandra Kapse. Later his legal representatives came on record. The said Rent Control Application was dismissed in default on 28th July 2000. Thereafter, there have been efforts on the part of the Respondent landlord to get the said Application restored. Ultimately by

order dated 20th December 2008 the Rent Controller allowed the application restoring the original Petition. This order was challenged before the Principal District Judge, Latur by the present Applicants and the Rent Appeal No.2 of 2009 came to be dismissed on 3rd September 2013. Thus the present Revision.

3. Learned counsel for the Applicants stated that the order dismissing the original Petition was passed on 28th July 2000 and thereafter the landlord filed Application for restoration of the original Petition on 7th August 2000 but the same came to be refused on the same day observing that good reasons are not made out and the application was not in prescribed form. The copy of the order is at Page No.18 of the Petition. The learned counsel referred to Exhibit C (Page No.19) to submit that the landlord instead of proceeding against the order dated 7th August 2000, filed another application claiming restoration of the

original Petition. The said application was filed on 24th August 2000 (Exhibit C). Record shows that in the matter twice orders were passed by the Rent Controller which went up in the Appeal to the District Judge and the matter was remanded back. In Rent Appeal No.9 of 2005 the Rent Controller was directed by the District Judge to record evidence of the landlord and tenant for restoration of the Application and in view of the same, the evidence came to be recorded and Rent Controller passed orders dated 20th December 2008 for restoration of the original Petition.

4. Learned counsel for the Applicant referred to the observations made by the Rent Controller in order dated 20th December 2008 (Page No.26) and according to him the reasonings recorded were not as per the pleadings and it is submitted that the Appeal has been wrongly allowed by the District Judge. Learned counsel submitted that earlier application for restoration was

dismissed on 7th August 2000 and thereafter another restoration application filed on 24th August 2000, was not maintainable.

5. Learned counsel for Respondent No.1 submitted that for 30 years the matter is stuck on technical point of restoration and there have been so many appeals. The counsel submitted that in the earlier appeals against orders of restoration filed by the Applicants, it was never claimed that there was second restoration application and that the same was not maintainable. The ground is now being raised to further protract the matter. The counsel submitted that landlord has been waiting for justice so long and on technicalities the matter is not able to proceed. According to the learned counsel, when on earlier occasions the Applicants did not raise objection, it has to be presumed that they have conceded to the procedure and they cannot now question the same.

6. Learned counsel for Respondent No.2 adopted the submissions made by the learned counsel for Respondent No.1.

7. Respondent No.3 served, is absent.

8. Point for consideration is :

Whether the impugned Judgment of the District Court is illegal or suffers from material irregularity?

9. Going through the record, what appears is that when the Rent Petition was dismissed on 28th July 2000, the landlord tendered to the Rent Controller application (Exhibit B) for restoration and the same was refused mentioning that sufficient reasons were not there and it was not in proper form. Thus it was not accepted. Landlord then filed application in form (Exhibit C) on 24th August 2000. Since then for various reasons, the

matter shuttled between the Rent Controller and District Court. So many years have passed and even now when the restoration order has been passed by the Rent Controller and maintained by the District Judge, the Applicants - tenants are agitating the same further. The District Judge appears to have gone through the order of the Rent Controller and the District Judge discussed the evidence to come to the conclusion that there was justification in favour of the landlord that the Petition should be restored. The District Judge found that between 17th March 2000 till 7th July 2000 the eviction proceeding was not taken up for hearing. District Judge observed that in such situation if subsequently the same was taken up, the notice to the landlord should have been given. If the proceeding was lying unattended this can be expected. Notice of hearing should have been given to the landlord.

10. Looking to the Order below Exhibit B

dated 7th August 2000, refusing the application, there is no substance that earlier application was rejected and another was filed. Even otherwise no such ground was taken by Applicants in earlier appeals. They conceded to the procedure and interest of justice requires that the Landlord should be given opportunity to agitate matter on merits.

11. For such reasons, I do not find that there is anything illegal or material irregularity in the order passed by the District Judge in Rent Appeal No.2 of 2009.

12(A). The present Revision Application is rejected with costs.

(B). Rent Controller, Udgir, seized with Application No. 1983/RCA/2 (Ramchandra Venkaterao Kapse vs. Shivraj Maharudrappa Wadje) is directed to expedite hearing of the Application and try to

dispose of the same within six months.

(C). Parties are directed to appear before the
Rent Controller on 9th March, 2015.

[A.I.S.CHEEMA,J.]

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