

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.31 OF 2015

Shaikh Tayyab Shaikh Hasan,
Age 48 years, occ. Painter,
R/o.H.No.1595 Kamathipura,
Zendigate, Ahmednagar ..Applicant

Versus

Shaikh Abeda Sultana Abdul
Razzak Haji, Age 75 years,
r/o. c/o. Dr.Khalid Shaikh
Sahani Clinic, Ahmednagar,
Dist. ..Respondent

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Mr.V.P.Latange, advocate for applicant

Mr.Shaikh Mazhar A. Jahagirdar, advocate for
respondent - sole

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CORAM : M.T. JOSHI, J.

DATE : JUNE 25, 2015

ORAL JUDGMENT :

Heard both sides.

2] **Rule.** Rule made returnable forthwith by
consent of the parties and the matter is taken up
for final disposal.

3] Reading of the record and papers and hearing

from both the sides, would show that the present applicant/defendant, who is a tenant in the suit property had, earlier, remained absent in the suit. The suit was filed by the present respondent/plaintiff for vacation of the suit property i.e. residential property, on the ground of *bonafide* occupation and as the present applicant was willful defaulter in payment of the rent. As the applicant failed to file written statement and did not contest the suit, after examining the daughter of the respondent/plaintiff, the trial Court decreed the suit on the grounds of *bonafide* requirement, nuisance and willful default.

4] Aggrieved by the said decree, present applicant/original defendant had filed Regular Civil Appeal No.215 of 2006. The earlier attempts of the present applicant for permission to file written statement were not successful in the trial Court, in this Court as well as in the Apex Court.

5] Upon hearing both sides, learned District Judge remanded the suit with direction: *"the plaintiff be permitted to adduce evidence in the form of an affidavit and examine herself on oath after affirming the contents of the affidavit with an opportunity to defendant and to cross-examine her on law points and thereafter necessary steps be taken and decide the issue afresh."*

6] Accordingly, after remand, learned trial Court again took up the suit for hearing. The daughter of the respondent – landlord was cross-examined and the suit was decreed as regards vacation on the ground of default in payment of rent.

7] Again, present applicant filed Regular Civil Appeal No.348 of 2013. The appellate Court examined the evidence on record and came to the conclusion that the grounds of *bonafide* occupation of the suit premises of the respondent as well as

nuisance are not proved, however, the case of default in payment of rent was proved and accordingly, decree was confirmed. Hence, present appeal.

8] Learned counsel for the applicant submits that as, in the earlier round of litigation in the Writ Petition, this Court has held that present applicant would be entitled to assail the order of the trial Court for proceeding the suit without written statement in view of the provisions of Section 105 of the Code of Civil Procedure, in the present round, learned District Judge ought to have considered the said order of proceeding the suit without written statement and ought to have again remanded the matter to the trial Court for granting permission to file the written statement.

9] Upon hearing both sides, however, it is clear that the issue, as to whether, the applicant can be given an opportunity to file the written

statement, was sealed, not only by order of the trial Court, but by this court and also by the Apex Court. In the second round of litigation, after remand, the only act that remained to be done by the trial Court, was to allow present applicant, to cross-examine the witnesses of the respondent on the question of law and decide the suit afresh. When the earlier Civil Appeal was filed by the applicant, at that time, there was opportunity to him to assail the interim order of proceeding the suit without written statement. After hearing both sides, learned District Judge, at that time, remanded the suit only for a limited purpose i.e. for limited cross-examination, as detailed supra.

10] In that view of the matter, now, when the judgment of the District Court remanding the matter in the next of the appeal only on the limited ground, was not challenged anywhere, now, again, the issue of permission to file the written

statement, could not have been considered by learned District Judge in the subsequent appeal.

11] On the other hand, though learned trial Court has allowed cross-examination on merit as well as in law beyond the direction issued by the District Court, no suggestion was given in the cross-examination that no notice, earlier to filing of the suit asking for arrears of rent, was served upon the applicant/defendant. Further, during pendency of the suit for two years, no rent was deposited. Both the courts below have gone into details of this aspect.

12] In that view of the matter, the revision petition is required to be dismissed.

13] Mr. Shaikh, learned counsel for respondent, further submits that in fact, the decree of the appellate Court not concurring with the trial Court as regards the ground of bona fide

occupation and nuisance and it also requires reconsideration.

14] From the admitted facts on record, it can be found that one premises has become available to the respondent during pendency of the suit and no evidence, except bare statements of the respondent regarding nuisance, were placed on record. In the circumstances, there is no material irregularity in the finding of learned District Judge in this regard.

15] In the result, the following order :-

. The Civil Revision Application is hereby dismissed without any order as to costs.

[M.T. JOSHI, J.]

kbp