

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 872 OF 2013

Mattummal R. Kuttan
(since deceased through Legal
Heirs) and anr.

.. Petitioners

vs.

Mahendra S. Sharma and ors.

.. Respondents

Mr. S.S. Kulkarni for the Petitioners.

Mr. S.D. Shinde for Respondent Nos.1 to 3.

CORAM : M. S. SONAK, J.

DATE : 1 JULY 2015.

P.C. :-

1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] By the impugned order dated 9 November 2012, the District Judge-4, Nashik (Appeal Court) has set aside the decree dated 4 February 2002 made by the Civil Judge, Junior Division, Nashik (Trial Court) partly and has remanded the suit for consideration of the ground of reasonable and *bona fide* requirement and comparative hardship.

3] The record indicates that the suit for eviction was earlier dismissed by the Trial Court. However, the appeal against the same was allowed and eviction of the petitioners was ordered. The

petitioners then instituted Writ Petition No. 966 of 1996, which was since allowed and the decree made by the Trial Court dismissing the suit for eviction was restored. The respondents herein, then instituted a review petition being Review Application No. 850 of 1999 and the same was disposed of by order dated 22 February 1999.

4] The review application was allowed, *inter alia* on the ground that certain subsequent events make it necessary for the Trial Court to revisit the issue of bona fide requirement. The relevant paragraphs in the order dated 22 February 1999, reads thus:

5. *Be that as it may, when there is subsequent events, same has to be considered by this Court. In view of the submission made before me, the judgment passed by me on 13.1.1999 requires modification.*

6. *Therefore, the judgment passed on 13.1.1999 is reviewed to the extent that instead of granting relief to the petitioner dismissing the Regular Civil Suit No. 261 of 1984 I remand the matter back to the lower Court for considering the subsequent events and pass appropriate order according to law and other part of judgments is kept intact. Liberty is given to the parties to adduce evidence regarding subsequent events and its bearing on the subject matter of the suit.*

5] In pursuance of the remand, the Trial Court, by decree dated 4 February 2002, once again dismissed the suit for eviction. The subsequent events, referred to in the order dated 22 February 1999,

by which the review was granted, was duly incorporated in the plaint by way of amendment. Both parties led evidence and ultimately, the decree of dismissal of the suit was made on 4 February 2002.

6] The Appeal Court, has not at all addressed itself to the issue as to whether the ground of *bona fide* requirement and comparative hardship was indeed made out on the basis of pleadings and material on record. Instead, the Appeal Court has remanded the matter once again to the Trial Court for fresh consideration. The reasoning, in support of such remand is contained in paragraph 21 of the impugned order, which reads thus:

21. *It cannot be overlooked that suit under reference is pending since from couple of years. On remand of the matter by the Hon'ble High Court again couple of years have lapsed. It is therefore necessary on the part of this Court to ascertain as to whether on appreciating evidence available on record a decree can be passed in the matter. In this respect as I have discussed earlier it is necessary on the part of the Court as well as parties to the proceedings to keep in mind that the fact in issue move around requirement of the suit premises on the point of starting business therefrom. Therefore it is desirable to allow the parties to lead additional evidence if any by keeping in mind such aspect and to read the evidence which has already been recorded particularly additional evidence on remand of the suit, then to decide the issue of bonafide requirement as well as comparative hardship especially by ignoring earlier evidence and earlier findings recorded in the suit under reference. This is being the position this Court is enable to record finding so far as Point*

Nos.1 and 2 are concerned. As such I answer Point Nos.1 and 2 as does not survive.”

7] The aforesaid reasoning, with respect to the Appeal Court, is unsustainable. This is not a case where during pendency of the appeal, the respondents-plaintiffs had come up with the case of any further subsequent events, which would perhaps once again necessitate a remand. The subsequent event, as referred to in the impugned order is nothing but the very same event, which had persuaded this Court to grant review and remand the matter for fresh consideration in its order dated 22 February 1999. In such circumstances, there was no reason for the Appeal Court to once again direct a remand and that too in such wide terms. Thus, it appears, to be a case where the Appeal Court has failed to exercise the jurisdiction vested in it. The entire material in form of pleadings and evidence was very much available before the Appeal Court. The jurisdiction of the Appeal Court not just entitles but also cast a duty upon it to analyse such material on record and to revisit, if necessary, the findings of fact that may have been recorded by the Trial Court. In such circumstances, there was neither any justification nor any case was made out for remand.

8] Accordingly, the impugned order, to the extent it sets aside (partly) the decree dated 4 February 2002 remands the matter to the Trial Court is set aside. Civil Appeal No. 109 of 2002 instituted by the respondents is restored to the Appeal Court, which shall itself, on the basis of the material on record return the findings on the aspect of *bona fide* requirement and comparative hardship. Such exercise shall be completed by the Appeal Court within a period of six months from the date of production of an authenticated copy of this order. Parties to appear before the Appeal Court on 20 July 2015 at 3.00 p.m., and produce an authenticated copy of this order.

9] It is clarified that this Court has not examined the merits and de-merits on the issue of *bona fide* requirement and comparative hardship, as such all contentions of all parties are kept open for decision by the Appeal Court.

10] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

12] All concerned to act upon an authenticated copy of this order.

(M. S. SONAK, J.)