

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2618 OF 2013

Subhash Vishwanath Todankar and anr. .. Petitioners
vs.
Rajnikant Dhondur Todankar and ors. .. Respondents

Mr. Madhav Jamdar for the Petitioner
Mr. Syed Azam A. Naqvi for Respondent Nos.1 to 5.
Ms Pooja Sharma for Respondent No.7.

CORAM : M. S. SONAK, J.
DATE : 25 AUGUST 2015.

P.C. :-

1] This petition was admitted on 5 March 2014. Considering the narrow controversy involved, the petition is being disposed of finally.

2] Heard the learned counsel for the parties.

3] By the order dated 10 October 2012, the Appeal Court, in the appeal instituted by respondent Nos.1 to 4 (tenants), has permitted the impleadment of respondent No.7 (third party), on the ground that such third party, is a proper party to the proceedings.

4] In this case, the records would indicate that the petitioners (landlords) had instituted a suit for eviction against the tenants in the year 2007. The suit was filed on the grounds of *bona fide*

requirement, as it is the case of the landlords that they presently reside in premises which admeasures hardly 90 sq.ft.. The suit was decreed on 17 August 2009. The tenants instituted Appeal No. 546 of 2009 questioning the eviction decree.

5] The appeal had reached at the stage of final hearing and the landlords had even filed their written statement, when the tenants took out the application at Exhibit-24 seeking to implead the third party as respondent in the appeal. The case made out in the said application was that the tenants had come across certain documents which suggest that the third party is, in fact, the owner in respect of the suit premises. The Appeal Court, by observing that the third party is having some rights in the suit premises, has allowed the application at Exhibit-24 and directed the impleadment of the third party.

6] In my judgment, the impleadment of the third party in a matter of this nature, is an exercise clearly in excess of jurisdiction. The record indicates that the landlords had created tenancy in respect of the suit premises in the year 1953. From the said year, the tenants have accepted the petitioners herein as the landlords in

respect of the suit premises. In the written statement, this position was specifically accepted. When the appeal was instituted no ground was raised that the petitioners are not the landlords in respect of the suit premises. Even otherwise, it is settled position in law that the party who applies for eviction under the Rent Act has to merely establish that he is the landlord of the suit premises, as the term is defined under the Rent Act. It is very much possible that the person who answers the definition of the landlord is not the actual owner of the suit premises. The issues of title as to ownership of the suit premises are normally not to be decided in proceedings under the Rent Act. At least, in the facts and circumstances of the present case, such an issue is totally irrelevant to the eviction proceedings now pending in appeal. Accordingly, there was no justification for making the impugned order.

7] The learned counsel for the tenants, however, submitted that there are several subsequent developments, including knowledge that the area where the suit premises are located having been declared as a slum area under the provisions of Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (Slum Act) and it is possible that such subsequent developments are

brought on record by the third party. This is really not a stage to entertain such submission. In any case, the presence of third party is clearly irrelevant and unnecessary for such proceedings. The impleadment of the third party will only contribute to protracting of the proceedings. The impugned order is clearly without jurisdiction and is required to be set aside.

8] On the aspect of certain subsequent developments, it is always open for the tenant to take out appropriate application under Order 41 Rule 27 of the Code of Civil Procedure, 1908 (CPC). In case, this is done within reasonable time, i.e., four weeks from today, the Appeal Court to consider such application on its own merits and in accordance with law, at the stage of deciding appeal on its own merits. The Apex Court, in case of *Union of India Vs. Ibrahim Uddin & another*¹, has observed that the application under Order 41 Rule 27 of the CPC is required to be considered only at the stage of final hearing of the appeal itself. It is made clear that this Court has not expressed any opinion in this regard and shall be open to the Appeal Court to decide such application, if the same is made within a period of four weeks from today, in accordance with law and on its own merits.

1 (2012) 8 Supreme Court Cases 148

9] The impugned order dated 10 October 2012 is, however, set aside. Further the Appeal Court is directed to dispose of the Appeal No. 546 of 2009 as expeditiously as possible and in any case within a period of three months from the date of production of authenticated copy of this order.

10] The parties, i.e., landlords and the tenants to appear before the Appeal Court on 3 September 2015 at 11.00 a.m. for obtaining suitable directions with regard to disposal of the appeal.

11] In any case, it is once again made clear that this Court has not expressed any opinion on merits of the disputes between the landlords and tenants and therefore, the Appeal Court should dispose of the appeal, in accordance with law and on its own merits.

12] Rule is made absolute in terms of prayer clause (a). In the facts and circumstances of the present case, there shall be no order as to costs.

13] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)