

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.328 OF 2015
WITH
CIVIL APPLICATION NO. 736 OF 2015
IN
SECOND APPEAL NO.328 OF 2015**

Shri Pandharinath Rakhmaji Darde

..Appellant

Vs

Shri Balu Sonu Hariyan, since
deceased, through L.Rs.
1.Smt.Suhasini Balu Hariyan
and Ors

.. Respondents

Mr. Ameya S. Tamhane, Advocate for the Applicant.

CORAM : R.G.KETKAR,J.
DATE : 29/04/2015

PC:

1. Not on Board. At the request of Mr. Tamhane, taken up in production Board. Heard Mr.Ameya S. Tamhane, learned counsel for the applicant.

2. By this Appeal under section 100 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the original defendant has challenged the Judgment and decree dated 7.12.2009 passed by the learned Jt. Civil Judge, Jr.Dn, Kalyan in Regular Civil Suit No.239 of 1995 as also the Judgment and decree dated 18.11.2014 passed by the learned District Judge-2, Kalyan in Civil Appeal No.22 of 2010. By these orders, the Courts below decreed the suit instituted by the respondents-

plaintiffs for recovery of possession of the suit property. The Courts below held that the appellant-defendant is in arrears of rent and the respondents-plaintiffs proved that they require the suit premises reasonably and bonafide for their own use and occupation and greater hardship would be caused to the plaintiffs in case eviction decree is not passed.

3. Having regard to the fact that the respondents instituted suit under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, in view of Section 29(2) thereof, Second Appeal is not competent.

4. In view thereof, the appellant is allowed to withdraw this Second Appeal with liberty to institute appropriate proceedings including Civil Revision Application. Refund of Court fees as per Rules. Office is directed to return certified copies to the Appellant.

5. It is expressly made clear that I have not examined merits of the case. All contentions of the parties on merits are expressly kept open.

6. In view of disposal of Second Appeal, Civil Application No. 736 of 2015 for stay does not survive and the same is disposed of.

(R.G.KETKAR, J.)