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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 934 OF 2014
WITH
CIVIL APPLICATION NO. 529 OF 2014

Smt.Dwarkabai Baburao Sonawane and others ... Applicants

Vs.

Mr.Ahmed Abbas Sayyed ... Respondent

Mr.PA.Gokhale a/w Mr.Sameer P. Khedekar, Advocate for applicants.
Mr.R.D.Soni, Advocate for Respondent.

CORAM : R. G. KETKAR, J.
DATE : 17th AUGUST, 2015

P.C. :

. Heard Mr.PA.Gokhale, learned Counsel for the applicants and Mr.R.D.Soni, learned Counsel for the respondent. Rule. Mr.Soni waives service. At the request and by consent of the parties, rule is made returnable forthwith and the Application is taken up for final hearing.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), original defendants have challenged the judgment and order dated 30/09/2013 passed by the learned Civil Judge, Junior Division, Shahapur below Exhibit 23 in Regular Civil Suit No. 39 of 2006. By that order, the learned trial Judge held that Suit is maintainable under Section 106 of the Transfer of Property Act, 1882 (for short 'Act') and rejected the

application filed by the defendants to dismiss the Suit on the ground of maintainability.

3. In support of this Application, Mr.Gokhale submitted that the learned trial Judge committed serious error in holding that since property in dispute was let out on rent prior to 30-35 years ago, Maharashtra Rent Control Act, 1999 is not applicable. He, therefore, submitted that the impugned order deserves to be set aside. He further submitted that in case, the Court is inclined to restore the application Exhibit 23, defendants will lead evidence, if they so desire.

4. On the other hand, Mr.Soni submitted that there is no relationship of landlord and tenant between the parties and the Suit is rightly instituted under the provisions of the Act. Upon taking instructions from the respondent who is present in the Court, Mr.Soni submitted that the impugned order may be set aside and even respondent will lead evidence, if so advised. He further submitted that all the contentions between the parties may be kept open. Learned Counsel appearing for the parties state that the parties will appear before the trial Court on 25/08/2015 and for that purpose fresh notice need not be issued to them. In view thereof, by consent of the parties, Application is disposed of in the following terms.

- i) The impugned order dated 30/09/2013 is quashed and set aside and application Exhibit 23 is restored to the file of the trial Court.
- ii) The parties shall appear before the trial Court on 25/08/2015 and for that purpose, fresh notice need not be issued to them.
- iii) The parties are at liberty to lead evidence on this limited issue, if they so desire.
- iv) The learned trial Judge is requested to decide preliminary issue within 3 months from the date of the appearance of the parties.
- v) All the contentions of the parties on merits are expressly kept open.

5. Rule is made absolute in the aforesaid terms with no order as to costs.

6. In view of the disposal of the Application, Civil Application No. 529 of 2014 for stay is disposed of accordingly.

(R. G. KETKAR, J.)