

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

C.A.O.NO.395/2014 IN M.C.A.ST.NO.23039/2013 (FOR REVIEW) IN
L.P.A.NO. 237/2012 IN W.P.NO. 1113/2012.

Shri Sanjay Shyamsunderji Jaiswal and others.

VERSUS

Shrichand Changamal Batra and others.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

CORAM : B. P. DHARMADHIKARI
AND A.P. BHANGALE, JJ.

DATE : MARCH 09, 2015.

Heard Shri A.J. Thakkar, learned Counsel
for applicants, Shri R.L. Khapre, learned Counsel for
non-applicant no.1 and learned A.G.P. for non-
applicant no.2.

Prayer is to condone delay of 453 days in
seeking review of judgment dated 27.08.2012
delivered in L.P.A. No.237/2012.

Shri Thakkar, learned counsel for the applicants submits that in terms of said judgment dated 27.08.2012, possession was received by the applicants/landlord on 31.12.2012, and thereafter the proceedings under Order XX Rule 12 of the Code of Civil Procedure for determination of mesne profits were filed. In those proceedings, the non-applicant filed reply on 07.12.2013, and thereafter landlord got knowledge of impact of judgment dated 27.08.2012, hence, after obtaining legal advise, present review application has been filed on 23.12.2013.

Shri Khapre, learned counsel appearing for non-applicant no.1 is strongly opposing the condonation of delay. According to him landlord was represented before this Court on 27.08.2012, and the arguments then advanced on applicability of Order XX Rule 12 were not opposed. He relies upon the observations of this Court in order dated 27.08.2012.

After hearing the respective counsel, and after applying our mind to the merits of the order, as we do not see any malafides, we condone the delay.

Office to register Misc. Civil Application.

Civil Application is accordingly allowed and disposed of. No costs.

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M.C.A.St.No. 23039/2013.

Misc. Civil Application is taken up for hearing by consent of learned counsel for the parties.

The fact that provisions of Section 106 of the Transfer of Property Act are not relevant in litigation under Maharashtra Rent Control Act, is not in dispute. As such, if the tenancy is not determined on any date prior to passing of the decree by the trial Court, the tenancy comes to end on the date on which such decree is passed. Consequently, the defendant/tenant is directed to hand over the possession to landlord. The provisions of Section 16(8) of the Maharashtra Rent Control Act, 1999 contemplate a situation where there is sub-tenant and landlord has sought permission to evict the tenant on

the ground of sub-tenancy. Thus, when sub-tenant continuing in possession is yet to be evicted, that provision has been made to protect the interest of landlord. The said provision therefore, cannot be used in other situation.

We, therefore, find that the request of the present application to grant him permission to evict his tenant on the ground of bonafide need was granted on the date on which the trial Court passed the judgment and decree i.e. 15.12.2008, therefore, there could not have been any enquiry under Order XX Rule 12 for period prior to 15.12.2008. Enquiry for period thereafter is necessary. The applicants/landlord has received possession on 31.12.2012.

In this situation, we grant the review and modify the order dated 27.08.2012 in Letters Patent Appeal no.237/2012. The landlord is held entitled to enquiry into mesne profits under Order XX Rule 12 of the Civil Procedure Code from 16.12.2008 till 31.12.2012.

Misc. Civil Application is partly allowed

and disposed of.

At this stage, Shri Khapre, learned counsel appearing for non-applicant submits that tenant had deposited an amount of Rs. 45,000/- with the landlord and that amount needs to be adjusted and appropriated towards the mesne profit amount. Similarly, while handing over possession, the fixtures/ attached furnitures has also been delivered in possession of the landlord and credit therefor should also be extended to the tenant.

Shri Thakkar, learned Counsel for the applicants/landlord is disputing this.

It is open for the tenant to raise these contentions and claims before the trial Court during the mesne profit enquiry and the trial Court shall adjudicate upon these claims and entitlement of rival parties in accordance with law.

JUDGE

JUDGE

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