

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY, BENCH
AT AURANGABAD**

APPEAL FROM ORDER NO.: 61 OF 2014

Devang Koshti Samaj Mandir Trust,
Through its Trustees:

- 1) Kishor S/o. Shankarrao Dhole,
Age: 50 years, Occu: Business,
(President of Trust).
- 2) Chandrakant S/o. Dagadu Movare,
Age: 60 years, Occu.: Business,
(Secretary of Trust).
- 3) Rajendra S/o. Murlidhar Godse,
Age: 45 years, Occu: Business.
- 4) Kailash S/o. Bhaurao Tidar,
Age: 65 years, Occu: Pensioner.
- 5) Bhagwan S/o. Digambar Godse,
Age: 70 years, Occu: Pensioner.
- 6) Eknath S/o. Dattatraya Karajkar,
Age: 72 years, Occu: Pensioner.
- 7) Santosh S/o. Suresh Dhole,
Age: 34 years, Occu: Business.
- 8) Santosh S/o. Prakash Marde,
Age: 40 years, Occu: Business.
- 9) Gokul S/o. Ashok Bapte,
Age: 45 years, Occu: Business.

All R/o Koshti Lane, Sangamner,
Tq. Sangamner, Dist. Ahmednagar.

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APPELLANTS

VERSUS

1. Jagdish S/o. Laxminarayan Oza,
Age: 75 years, Occu: Business.

2. Vijay S/o. Laxminarayan Oza,
Age: 60 years, Occu.: Business.
3. Vasant S/o. Laxminarayan Oza,
Age: 68 years, Occu: Business,
4. Ayodhyabai W/o. Laxminarayan Oza,
Age: 90 years, Occu: Household.

All R/o Abhinav Nagar, Sangamner,
Tq. Sangamner, Dist. Ahmednagar. ...

RESPONDENTS

Mr. V. S. Bedre, Advocate for the Appellants.
Mr. A. N. Nagargoje, Advocate for the Respondents.
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CORAM:-
DATED:-

T. V. NALAWADE, J.
15th FEBRUARY, 2016.

JUDGMENT:

1. Appeal is admitted. Notice after admission made returnable forthwith. Heard both sides by consent for final disposal.
2. The appeal is filed to challenge the judgment and order of Regular Civil Appeal No.52 of 2005 which was pending before District Judge-1, Sangamner, District Ahmednagar. Appeal filed by present respondent, tenant against judgment and decree of Regular Civil Suit No.119 of 1990, which was pending before Civil Judge, Junior Division, Sangamner, is allowed by the District Court. The suit was filed by present Appellant, landlord for eviction under three grounds viz.

ground of default, ground of bonafide requirement and ground of acquiring alternate accommodation by the tenant. The trial Court decreed the suit under all the three grounds. The District Court has set aside the decision by observing that separate issue was not framed about comparative hardship in respect of the ground of bonafide requirement. No discussion is made in respect of other two grounds which were held to be proved by the landlord in the trial Court. The District Court has remanded the matter to the trial Court. A direction is given to frame additional issue about comparative hardship and give opportunity to both the sides to lead evidence on that. Though such direction is given, the operative part of the decision does not show that the findings given in respect of other two grounds are to be reconsidered or they are not to be considered.

3. The learned counsel for the Appellant landlord placed reliance on the case reported as **2005 (3) Mh.L.J. 196 (Goverdhandas Mulchand Agrawal and others V/s Bherulal Uderam Bagade and another)**. He submitted that initial burden to prove bonafide requirement was on the landlord but after making out case of bonafide requirement the onus

had shifted on the tenant to show that greater hardship will be caused to him if decree of eviction is given against him. He submitted that if there was no specific issue framed, the Court could have decided this point as a part of the main issue of bonafide requirement and after considering the material as was made available by both the sides. There cannot be dispute over the aforesaid proposition made by the learned counsel for the landlord.

4. It appears that both the sides have attempted to produce some record before the District Court. Landlord produced some record to show that subsequent to the decision given by the trial Court the tenant had acquired one more property. That record was produced along with application. Similarly, the tenant had applied to the District Court for giving permission to make amendment in written statement and give evidence in respect of the case he wanted to put up after amendment. The District Court had rejected this application but this Court allowed the tenant to make such amendment. In view of this development, it can be said that both the sides wanted to lead evidence on subsequent developments and this Court had made order of

aforesaid nature in favour of tenant. In view of the provision of Order 41 Rule 27 of Civil Procedure Code if the conditions laid down under Order 41 Rule 27 C.P.C. are satisfied the Appellate Court can allow such evidence to be produced, or witnesses to be examined. In view of this power of Appellate Court, the Appellate Court is not expected to make order of remand as a matter of course. Order of remand can be made only in exceptional circumstances. Further, the scope of taking into consideration the subsequent developments also need to be kept in mind in view of law developed in the cases like present one on such development. It can be said that the tenant was aware of the onus which was on him with regard to the aforesaid point, hardship. In view of the aforesaid circumstances, a specific issue can be considered by the District Court regarding hardship and the matter itself can be decided by the District Court in appeal. The Appellate Court is expected to give decision on all the issues which are decided by the trial Court and that was also not done by the District Court. Such decision of the District Court cannot sustain in law.

5. In the result, the following order is made:

Appeal is allowed. The judgment and order of the first Appellate Court is hereby set aside. It is up to the Appellate Court to see that if required the parties are allowed to lead evidence in view of the amendment to the written statement allowed by this Court and even on the specific issue of hardship. Parties are to appear before the Appellate Court on 7th March, 2016. The District Court is to see that the matter is decided within five months from date of receipt of the order. Parties to act on authentic copy of this order.

(T. V. NALAWADE, J.)

Dated: 15/02/2016.
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