

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 12003 OF 2016

Shri. Namdeo Maruti Mane,
Age 55 years, Occu. Service,
R/o. Kaikadi Galli, Peth Bhoom,
Tq. Bhoom, District Bhoom,
Through its Power of Attorney Holder,
Shri. Manoj Namdeo Mane,
Age 25 years, Occu. Nil,
R/o. Kaikadi Galli, Peth Bhoom,
Tq. Bhoom, District Bhoom.

....Petitioner.

Versus

Ishwar Kondiba Khose,
Age 49 years, Occu. Service,
R/o. Kaikadi Galli, Peth Bhoom,
Tq. Bhoom, District Bhoom.

....Respondent.

Mr. A.S. Kale h/f. Talekar and Associates, Advocate for petitioner.
Mr. K.R. Dhoke, Advocate for respondent.

CORAM : T.V. NALAWADE, J.
DATED : 15th December, 2016.

ORAL JUDGMENT :

1) Rule. Rule made returnable forthwith. By consent,
heard both the sides for final disposal.

2) The proceeding is filed to challenge the order made
by Ad-hoc District Judge-1, Bhoom in Misc. Civil Appeal No.
19/2016. This appeal was filed to challenge the order made by
Civil Judge, Junior Division, Bhoom on Exh. 34 in Rent Suit
bearing Regular Civil Suit No. 73/2011. Application at Exh. 34

was filed under section 29 of the Maharashtra Rent Control Act, 1999 (hereinafter referred to as 'the Act' for short) for restoration of essential services like supply of electricity and water. The Trial Court had rejected the application on merits. But the appellate Court in appeal has held that such relief needs to be granted and appeal is allowed.

3) There are many aspects which need to be dealt with in the present matter. Firstly, the proceeding under section 29 of the Act is an independent proceeding. Such proceeding cannot be a part of rent suit. Even in Civil Manual, in Clause like 337 prepared by this Court for procedure which is to be followed by the Trial Court, it is made clear that the proceedings including Misc. Civil Application requiring judicial inquiry need to be given separate number and they need to be dealt with separately. In view of this circumstance, it was necessary to file separate proceeding under section 29 of the Act.

4) Section 34, proviso (d) of sub-section (1) of the Act runs as under :-

"34. Appeal (1) Notwithstanding anything contained in any law for the time being in force, an appeal shall lie-

(a) in *Brihan Mumbai*, from a decree or order made by the Court of Small Causes, *Mumbai*,

exercising jurisdiction under section 33, to a bench of two Judges of the said Court which shall not include the Judge who made such decree or order;

(b) elsewhere, from a decree or order made by a Judge of the Court of Small Causes established under the Provincial Small Causes Courts Act, 1887, or by the Court of the Civil Judge deemed to be the Court of Small Causes under clause (c) of sub-section (2) of section 33 or by a Civil Judge exercising such jurisdiction, to the the District Court :

Provided that no such appeal shall lie from,-

(a)

(d) an order made upon an application by a tenant for a direction to restore any essential supply or service in respect of the premises let to him."

This provision shows that the order made under section 29 of the Act is not appealable. This provision again shows that the application under section 29 cannot be a part of Rent Suit. Further, the District Court had no jurisdiction to entertain the appeal and that reason is sufficient for setting aside the order made by the District Court.

5) The learned counsel for respondent, original applicant of the application placed reliance on the observations made by this Court at Principal Seat in case reported as **2012(1)**

Mh.L.J. 730 [Hansa Bhaskar Dave and Anr. Vs. Harihar Himmatlal Mehta]. He submitted that in that matter, the application was filed as interim application and the order made was challenged by filing appeal and then the matter was taken to High Court by filing writ petition. The case shows that such proceeding was filed. However, with due respect, it needs to be mentioned that the aforesaid aspects were not at all touched by the learned Single Judge who decided the matter. In view of the specific provisions of law like section 34 as quoted above, the appeal itself was not tenable and so, the order made by the District Court cannot sustain in law. The observations made by the learned Single Judge of this Court are of no help to the present respondent. It will be open to the present respondent to file appropriate proceeding as provided by law.

6) In the result, the petition is allowed. The decision given by the District Court in Misc. Civil Appeal No. 19/2016 is hereby set aside and the application filed in rent suit at Exh. 34 stands rejected as it is not tenable in the said proceeding.

Rule is made absolute in aforesaid terms.

[T.V. NALAWADE, J.]

ssc/