

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 6228 OF 2015

MR. MOHAMMED ASLAM
QURESHI

...Petitioner

Versus

MR. YEZDI KHODARAM IRANI
AND ORS

...Respondents

....

Mr. Muhammed I. Ali, Advocate for the Petitioner.

Mr. Sugandh B. Deshmukh, Advocate for Respondent Nos.1 & 2.

....

CORAM : R. G. KETKAR, J.

DATE : 2nd FEBRUARY, 2016

P.C.

1. Heard Mr. Muhammed I. Ali, learned Counsel for the petitioner and Mr. Sugandh B. Deshmukh, learned Counsel for respondent Nos.1 and 2, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 2.12.2014 passed by the Appellate Bench of the Small Causes Court at Mumbai in Revision Application No.219/2012. By that order, the Appellate Bench allowed the revision application preferred by respondent Nos.1 and 2, hereinafter referred to as the 'plaintiffs' and set aside the order dated

24.7.2012 passed by the learned Judge, presiding over Court Room No.23 of the Small Causes Court at Bombay below Exh.20 in R.A.E. Suit No.213/319 of 2010 and allowed the application Exh.20 made by the plaintiffs.

3. The plaintiffs instituted the suit against the petitioners, hereinafter referred to as 'defendants' on three grounds, namely, (i) unlawful sub-letting, (ii) carrying out additions and alterations of permanent nature without written consent of the plaintiffs, and (3) reasonable and bonafide requirement.

4. Pending the Suit, the plaintiffs took out application Exh.20 for impleading Mr. Abhishek Rane as defendant No.2 on the ground that the defendant has parted with the possession of the suit premises to Shri Abhishek Rane. By order date 24.7.2012, learned trial Judge rejected the application. The plaintiffs preferred Revision Application which is allowed. It is against this order, the defendant has instituted the present Petition.

5. Mr. Ali submitted that the revision preferred by the plaintiffs itself is not maintainable as the order passed by the trial Judge was merely a procedural order not affecting the substantive rights. He has relied upon the decision of this

Court in the case of **Sukhdev Prasad Raghubir vs Rambhujarat Kshampati, AIR 1983 BOM 25**. He, therefore, submitted that the impugned order is liable to be set aside.

6. On the other hand, Mr. Deshmukh relied upon the judgment of the Full Bench in the case of **Bhartiben Shah vs. Gracy Thomas and others, 2013(2) Mh.L.J. 25** and in particular para-46 where the Full Bench has overruled the decision in **Sukhdev's** case (supra). He further relied upon Rule 4 of the Presidency Small Causes Court Rules, 1968 (for short, 'the Rules') which lays down that the plaintiff shall implead as party defendants or respondents, as the case may be, all persons in actual possession of the whole or part of the premises involved in the suit or the application. He therefore submitted that no case is made out for invoking the powers under Article 227 of the Constitution of India.

7. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record.

8. Mr. Ali submitted that Shri Abhishek Rane has filed additional affidavit placing on record that he has no documents

to show that he was occupying the suit premises on leave and licence basis. He further submitted that said Rane is no more in possession. The Appellate Bench while allowing the revision application has observed that it is a matter of trial. The Appellate Bench also referred to Rule 4 of the Rules and allowed the revision application. Rule 4 of the Rules reads thus :

“4. A plaintiff in a suit and an applicant in an application for ejectment may add, as party defendants or respondents, as the case may be, all persons in actual possession of the whole or part of the premises involved in the suit or the application.”

9. In view thereof I do not find that the Appellate Bench has committed any error in allowing the revision application. Hence the Petition fails and the same is dismissed.

10. It is made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contended by section 105(1) of Civil Procedure Code.

(R. G. KETKAR, J.)