

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

SECOND APPEAL NO.590 OF 1990

1.Ratanchand Santokchand Jain	]	
(Since deceased through his heirs and	]	
legal representative)	]	
1a. Smt. Ratanben R. Jain	]	
Age 77 years, Occ.: Household,	]	
1b. Shri Naresh Ratanchand Jain	]	
Age 49 years, Occ: Business,	]	
1c. Shri Dilip Ratanchand Jain	]	
Age 47 years, Occ.: Service.	]	
(All residing at Post Vangaon,	]	
Tal.Dahanu, Dist. Thane)	]	..Appellant/Orgn. Defdts.

Vs.

1. Kantaben Atmaram Darji	]
(Since deceased through her heirs and	]
legal representatives)	]
1a. Shri Arvind Atmaram Darji	]
Age about 50 years, Occ.: Business	]
1b. Shri Pravin Atmaram Darji	]
(since deceased through his heirs and	]
legal representative)	]
Smt.Hansaben widow of Pravin	]
Atmaram Darji	]
Age about 43 years, Occ.: Household	]
1c. Shri Deepak (Dipu) Atmaram Darji	]
Age adult 35 years Occ.: Business	]

(All are residing at J. C. Park, Near]
Narayan Park, Plot no. Chinchani]
Wangaon Road, At Post Wangaon,]
Tal. Dahanu, Dist. Thane)]..Respondent/Org. Plntfs.

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None for the appellants.
None for the respondents.

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CORAM : N.M. JAMDAR, J.
DATED : 17 MARCH 2016

ORAL JUDGMENT:

. The second appeal was admitted on 27 November 1990
on the following grounds:

“2. Both the Lower Court has erred in holding
that the provisions of the Bombay Rent Act 1948 are not
applicable to the suit premises;

4. Both the Lower Court having held that the
provisions of Bombay Rent Act are not applicable to the
suit premises ought to have decided the basic issue of
validity of notice of termination.

5. The Lower Courts have committed an error of
jurisdiction in not framing issue regarding the validity of
the notice and have rendered judgments which are bad in
law and contrary to the provisions of Transfer of
Property Act.”

2. The substantial questions of law are in respect of
applicability of the Bombay Rent Act to the suit premises and
whether the notice issued was valid.

3. The Appeal appeared on board on 7 January 2014, when

none appeared for the appellant. On 10 February 2014, also none appeared for the appellant. Appeal was dismissed for non-prosecution. Civil Application was taken out and the Second Appeal was restored qua respondent Nos.1a and 1c only. When the appeal is called out, none appeared. The Appeal is pending for since 1990 and the hearing cannot be deferred. The board is notified a week in advance.

4. Perused the judgments of the Trial Court and the District Court. The question of law raised is only regarding applicability of the Bombay Rent Act. The respondent had placed on record a notification dated 24 December 1981 which made the provisions of Bombay Rent Act applicable to the Vangaon, Taluka Dahanu, District Thane. However, the Act was made applicable only to the residential premises. It has come on record that the suit property was being used by the appellant for commercial purposes for running a shop. The Trial Court as well as the Appellate Court took this fact into consideration to hold that since the Bombay Rent Act was extended to the concerned area only for residential purposes, the contention of the respondent that the structure in question was governed by the provisions of the Bombay Rent Act could not be accepted. A finding of fact has been rendered that the structure in question was not for the purpose of residence. The relevant clause of the Notification, which is reproduced in the impugned judgment shows that the Bombay Act is made applicable only to the residential premises in the area. In the circumstances, the view

taken by both the Trial Court as well as the Appellate Court cannot be faulted with nor there is any perversity. In view of the clear language of the notification, the substantial question of law will have to be answered that the provisions of Bombay Act were not applicable.

5. Once the provisions of the Bombay Rent were not applicable, then the question arises as regards notice to be issued to the appellant. Again, notice dated 13 September 1994 is on record. The tenancy is terminated by the said notice. Both the courts have concurrently held that the notice was issued. This is a finding of fact. The question regarding the validity of notice also will have to be answered against the appellant. In the circumstances, there is no merit in this appeal. Appeal is accordingly dismissed.

(N.M. JAMDAR, J.)