

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

***SECOND APPEAL NO. 262 OF 2016
ALONG WITH
CIVIL APPLICATION NO. 223 OF 2016***

Shri Manohar Jialdas Chhablani
@ Gyan J. Khashturi,
R/at Manohar villa,
Near Telephone Exchange Road,
Ulhasnagar – 421 001, Dist. Thane.

... Appellant/Applicant

v/s

State of Maharashtra & ors.

... Respondents

Mr.J.S.Chandnani along with Ms.Minal Chandnani for the appellant/
applicant.

Mr.S.M. Kamble for Resp. No.6.

Mr.Omprakash Parihar for Resp. No.7.

Coram: N.M. Jamdar, J.

Dated: 18 July, 2016

ORAL ORDER:

The Appellant challenges the judgment and order passed by the Civil Judge, Senior Division, Kalyan, below Exh.5 in Special Civil Suit No.93 of 2012 and the judgment and decree passed by the learned District Judge, Kalyan in Civil Appeal No.85 of 2015, dated 4 January 2016. By the impugned judgment and order, the application filed by Respondent No.7 under Order 7 Rule 11 of the Code of Civil Procedure, was allowed and the plaint of the suit instituted by the Appellant was rejected.

2 Heard learned counsel for the parties.

3 Admit on the following substantial question of law :

(I) Whether the learned District Judge committed an error in not correctly appreciating the applicability of Section 36 of the Displaced Persons (Compensations and Rehabilitation) Act, 1954 ?

4 Learned counsel for the Respondents waive service. Learned A.G.P. appears for Respondent Nos.1 to 5.

5 Taken up for final disposal forthwith by consent of parties. Printing of private paper-book is dispensed with.

6 The Appellant filed Special Civil Suit No.93 of 2012 in the Court of Civil Judge, Senior Division, Kalyan, for a declaration and perpetual injunction. According to the Appellant, the Appellant and his father were refugees migrated from Pakistan. They were granted an conveyance on 4 March 1985 under the scheme of rehabilitation for the refugees framed under the Displaced Persons (Compensations and Rehabilitation) Act, 1954. According to the Appellant, the Revenue Secretary, Mantralaya, by an order dated 29 September 2008 declared the conveyance deed as illegal, which, according to the Appellant, could not have been done as the said Act has repealed. The Appellant thereafter filed the present suit and

sought various prayers, primarily, challenging the order passed by the Secretary on 29 September, 2008.

7 In the suit, Defendant No.7 filed an application below Order 7 Rule 11 stating that under Section 36 of the Act, there is a bar to entertain the civil suit and, therefore, the plaint be rejected. The learned Civil Judge allowed the application and rejected the plaint. The appeal filed by the Appellant in the District Court, Kalyan, was dismissed on 4 January 2016.

8 The learned counsel for the Appellant submitted that there is no question of applicability of Section 36 of the Act as the Act itself was repealed in the year 2005. He submitted that, inspite of raising this ground in the appeal, the learned District Judge has not considered the same in proper perspective. Learned counsel for Respondent No.7 submitted that there are various other grounds on which the Appellant is not entitled to the relief sought for in the suit.

9 The main argument advanced by the Appellant was that the Act was repealed in the year 2005 itself. It is the contention of the learned counsel for the Appellant that the repeal of the Act is absolute and there is no saving clause. While it is the contention of the Respondent No.7 that the Appellant is not entitled to any other relief in this suit. I have gone through the decision of the learned District Judge. The learned District Judge refers to bar of Section 36 and it

does refer to the argument of the Appellant regarding repeal. The learned District Judge has not addressed the issue of repeal. More particularly, when a decision that the suit is not maintainable is being taken. This being the main argument of the Appellant it ought to have been considered by the learned District Judge. In this situation, it was put to the learned counsel for the Respondent No.7 as to whether, instead of admitting the appeal on this ground, the proceedings could be remanded to the learned District Judge for reconsideration of the above main issue, which has not been adjudicated in proper perspective. Learned counsel for the Respondent No.7 on instructions submitted that, instead of admitting the appeal, the course of action of remand to the learned District Judge would be proper.

10 Considering the rival contentions as stated above, the question of law as framed, will have to be answered in favour of the Appellant and the proceedings will have to be remanded back to the learned District Judge, Kalyan.

11 Learned counsel for Respondent No.7 also submitted that the Appellants have invoked writ jurisdiction of this Court and the writ petition is pending. It is open to Respondent No.7 to seek appropriate orders in the writ petition depending on the decision of the appeal proceedings.

12 Accordingly, the second appeal is allowed. The impugned judgment and order dated 4 January 2016 is quashed and set aside. The Civil Appeal No.85 of 2015 filed by the Appellant stand restored to the file of the District Judge, Kalyan. The learned District Judge will make an endeavour to dispose of the appeal as early as possible, preferably within six months from the date of the writ by this Court reaching it. Registry to communicate the order forthwith.

13 The ad-interim order which was granted on 3 February 2016 to continue for a period of four weeks from today. Thereafter it is open to the Applicant to take appropriate application for an interim relief in the pending appeal which the learned District Judge will consider on its own merits without being influenced by the grant and continuation of the ad-interim order granted by this Court.

14 All the contentions on merits are kept open.

15 Parties will appear before the learned District Judge on 1 August 2016.

16 In view of disposal of the appeal, the civil application does not survive and is disposed of.

(N. M. Jamdar, J.)