

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

**WRIT PETITION NO. 2621 OF 1991
WITH
CIVIL APPLICATION NO. 2626 OF 2015 IN WP/2621/1991**

1.Mrs. Laxmibai Shridhar
Prabhudesai and Ors.

..Petitioners.

Vs

1. Mrs Nalini Mahadeo Thakur
and Ors.

.. Respondents

Ms. Jai Kanade i/b Ashok B. Tajane, Advocate for Petitioners.
Mr. N.V.Walawalkar, Senior Advocate, i/b Mr.G.H.Keluskar,
Advocate for Respondents no. 2 to 4.

**CORAM : R.G.KETKAR,J.
DATE : 23/08/2016**

PC:

1. Heard Ms. Jai Kanade, learned counsel for the petitioners and Mr. N.V.Walawalkar, learned senior counsel for respondents no. 2 to 4 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as 'plaintiffs', have challenged the Judgment and decree dated 12.3.1991 passed by the learned Addl. District Judge, Thane in Civil Appeal No. 170 of 1987. By that order, the learned District Judge allowed the Appeal preferred by defendants no. 1 to 4 and quashed and set aside the Judgment and decree dated 4.3.1987 passed by the learned Jt. Civil Judge, Jr. Dn., Kalyan in Regular Civil suit No. 75 of 1981.

The learned District Judge dismissed the suit instituted by the plaintiffs.

3. Plaintiffs had instituted suit for recovery of possession of the premises consisting of two rooms of Municipal Ali No.52, House no.1 of Kalyan against the defendants, inter alia, invoking grounds under Section 13(1)(e) (unlawful subletting) and 13(1)(g) (reasonable bonafide requirement). Learned trial Judge decreed the suit. Aggrieved by that decision, defendants no. 1 to 4 preferred Appeal which was allowed. It is against this order, the plaintiffs have instituted the present petition.

4. Plaintiffs have taken out Civil Application No.2626 of 2015, inter alia, praying for impleading Chandrakant R. Shetty as petitioner no.4 in the above petition as also for amending the writ petition as per Schedule 'A' to the Application. The plaintiffs have also prayed for leave to file separate application for amending the plaint in Regular Civil Suit No. 75 of 1981. Application is taken out on the ground that during the pendency of the proceedings, the plaintiffs have executed the sale deed in favour of Chandrakant R. Shetty on 10.6.2010. By that sale deed, the plaintiffs have sold the entire property to him where the suit premises is situate. Ms. Kanade submitted that the matter was adjourned from time to time for exploring possibility of settlement. She, therefore, asked Mr. C.R.Shetty to personally

attend the court proceedings. She states that she has received communication dated 23.8.2016 from him wherein it is set out that he has undergone surgery at Hinduja Hospital on 5.8.2016. He is not in a frame of mind to think clearly on the subject in such short space. He has, however, instructed her to ask for one week's time so that he can possibly attend personally. If the Court is not inclined to adjourn the matter he is ready to pay Rs. Ten lacs to defendants. If the defendants are not agreeable to this, then he will withdraw the suit and file fresh suit which may be disposed of within one year. She has tendered the said communication which is taken on record and marked "X" for identification.

5. Mr. Walawalkar states that representative of defendants no. 2 to 4 is present in the Court. Upon taking instructions from him, he states that the defendants are not agreeable for accepting Rs. Ten lacs. He further submitted that in fact the requirement pleaded by the plaintiffs and the requirement of Mr C.R.Shetty pleaded in the application are materially different. Prayer clauses (b) and (c) made in the application cannot be granted. He submitted that Mr. C.R.Shetty may be given liberty to file fresh suit invoking grounds that are available for eviction and reserving liberty to the defendants to file written statement opposing the said suit.

6. As the learned counsel appearing for the parties were substantially heard, it is not possible to accede to the request made by Ms Kanade to adjourn hearing of this petition for one week. Perusal of the communication dated 23.8.2016 does not indicate that Mr C.R. Shetty will positively attend the Court after one week. He instructed Ms Kanade to ask for one week's time **so that he can possibly attend the court personally.** It is, therefore, not possible to adjourn the hearing of this petition.

7. Ms. Kanade submits that in view of Order XXII, Rule 10 of C.P.C., prayer clause (a) may be allowed. As far as prayer clauses (b) and (c) are concerned, liberty may be reserved to Chandrakant R. Shetty to institute fresh suit against the defendants invoking grounds that are available under the Rent Act. He may be reserved liberty to agitate contentions raised in the application along with other contentions that may be available.

8. Ms. Kanade states that Santosh Balu Jadhav, Manager/Assistant of Mr. Chandrakant R. Shetty is present in the Court. She has tendered photocopy of Pan Card of Mr. Jadhav which is taken on record and marked "Y" for identification.

9. In the light of communication dated 23.8.2016 and on the basis of instructions from Mr. Jadhav, Ms. Kanade seeks permission to withdraw this Petition with liberty to C. R Shetty to

institute suit against the defendants for recovery of the suit premises.

10. In view thereof, Civil Application No. 2626 of 2015 is allowed in terms of prayer clause (a). As far as rest of the prayers are concerned, liberty is reserved to Mr. C.R.Shetty to agitate the contentions raised in this application along with other contentions that will be available to him in the proposed suit. Hence, the following order.

(i) Petition is allowed to be withdrawn with no order as to costs.

(ii) Mr. C. R.Shetty is permitted to file suit against the defendants. He is also permitted to agitate contentions raised in Civil Application No.2626 of 2015 along with any other contentions that may be available to him. The defendants are at liberty to contest the suit by filing written statement. All contentions of the parties in that regard are expressly kept open.

(iii) In the event of C.R.Shetty filing suit, the learned trial Judge is requested to dispose of suit as expeditiously as possible and preferably within one year from completion of service on the defendants.

(iv) Rule is discharged with no order as to costs. Order accordingly.

(R.G.KETKAR, J.)