

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.202 OF 2015

Indubai Rakhmaji Chaughule (decd) through legal heirs
Vijay Rakhmaji Chaughule and others ... Applicants
Vs.
Suman Bhalchandra Gatne and others ... Respondents

Mr. S. P. Dighe for Applicants.
Ms Sanjukta Dey i/b. Ms Shivani S. Samel for Respondents No.1, 2a and 2b.

CORAM : R. G. KETKAR, J.
DATE : SEPTEMBER 19, 2016

P.C. :

Heard Mr. Dighe, learned Counsel for applicants and Ms Dey, learned Counsel for respondents No.1, 2a and 2b at length. Mr. Dighe seeks leave to delete rest of the respondents on the ground that respondents No.1, 2a and 2b are the only contesting respondents being the original plaintiffs. On the motion made by Mr. Dighe, leave to delete respondents No.3 and 4 is granted. Amendment shall be carried out forthwith. Rule. Ms Dey waives service for respondents. At the request and by consent of the parties, Rule is made returnable forthwith and the C.R.A. is taken up for final hearing.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908, applicants, hereinafter referred to as 'defendants No.1 to 3', have challenged the judgment and decree dated 16.07.2007 passed by the learned II Joint Civil Judge, Junior Division, Nashik in Regular Civil Suit No.369 of 2006 as also the judgment and decree dated 02.12.2014 passed by the learned Principal District Judge, Nashik in Regular Civil Appeal No.46 of 2010. The learned trial Judge decreed the Suit instituted by the respondents, hereinafter referred to as

'plaintiffs', under Sections 15, 16(1)(b), 16(1)(e) and 16(1)(g) of the Maharashtra Rent Control Act, 1999 (for short 'Act'). Aggrieved by this decision, defendants No.1 to 3 preferred appeal. During the pendency of the appeal, plaintiffs filed affidavit dated 12.11.2014 of Milind Bhalchandra Gatne at exhibit-27 in the appeal. In paragraph 5, plaintiffs gave up ground under Section 16(1)(g) of the Act. The learned District Judge decreed the Suit on the ground of denial of title as also despite plaintiffs not pressing ground under Section 16(1)(g), decreed the Suit on that ground as well.

3. Matter was heard at length on different dates. Mr. Dighe states that applicant No.2 is present in the Court. He has tendered photocopy of his driving licence, which is taken on record and marked 'X' for identification. Ms Dey states that plaintiffs are present in the Court and she has tendered written instructions dated 08.09.2016 given by respondent No.2a, which is taken on record and marked 'Y' for identification. Upon taking instructions, learned Counsel for the parties submit that by consent, impugned order passed by the learned District Judge may be set aside and the appeal may be restored to the file of the District Court. They further submit that parties may be permitted to amend their pleadings and they also may be permitted to lead additional evidence. They assure that parties will appear before the District Court on 15.10.2016 and for that purpose, no fresh notice be issued to them. Ms Dey further assures that within four weeks from 15.10.2016, plaintiffs will amend the plaint and file the same in the Court and serve the amended plaint on the defendants. Mr. Dighe also assures that upon service of the amended plaint, within four weeks thereafter, defendants No.1 to 3 will file the amended written statement in the Court and will serve the same on the plaintiffs and defendants No.3 and 4 during this period.

4. In view thereof, by consent of the parties, C.R.A. is disposed of in the following terms:

a. Judgment and decree dated 02.12.2014 passed by the learned Principal District Judge, Nashik in Regular Civil Appeal No.46 of 2010 is quashed and set aside. Regular Civil Appeal No.46 of 2010 is restored to the file of the District Court;

b. Parties agree that they will appear before the District Court on 15.10.2016 and for that purpose, no fresh notice be issued to them;

c. Plaintiffs and defendants are permitted to amend their respective pleadings. Plaintiffs will amend the plaint and file the same in the Court and serve the amended plaint on the defendants within four weeks from 15.10.2016. Upon service of the amended plaint, within four weeks thereafter, defendants No.1 to 3 will amend their written statement and file the same in the Court and serve the amended written statement on the plaintiffs and defendants No.3 and 4 during this period;

d. The learned District Judge will either permit the parties to lead additional evidence before him or direct the trial Court, from whose decree the appeal is preferred, to take the evidence and transmit the same to the District Court. The said evidence shall form part of the record;

e. Parties assure that they will extend full co-operation for recording additional evidence and will complete the entire exercise within 3 months after completion of amendment of pleadings;

f. In the meantime, interim order operating in the appeal shall stand restored;

g. All contentions of the parties, on merits, are expressly kept open;

h. Rule is made absolute in the aforesaid terms with no order as to costs;

(R. G. KETKAR, J.)