

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 285 OF 2016
WITH
CIVIL APPLICATION NO. 299 OF 2016**

Shri Pradyumna B. Shastri

..Applicant

Vs

Smt. Chandrabai Zingade, since
deceased through heirs;
1(a) Vishnu Dattatraya Rasankar
and Ors.

.. Respondents

Mr. Amit Borkar, Advocate for Applicant.

Mr.,P.J.Thorat a/w Ms Pratibha Shelke, Advocate for
Respondents.

CORAM : R.G.KETKAR,J.
DATE : 10/10/2016

PC:

1. Heard Mr. Amit Borkar, learned counsel for the applicant and Mr.P.J.Thorat, learned counsel for the respondents at length. Rule. Mr.Thorat waives service for the respondents. At the request and by consent of the parties, Rule is made returnable forthwith and petition is taken up for final hearing.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicant has challenged the Judgment and decree dated 23.9.2010 passed by the learned Judge presiding over Court Room No.33 of the Court of Small Causes at Bombay (Bandra Branch) in R.A.E.& R.Suit No.28/73 of

1995 as also the Judgment and decree dated 3.2.2016 passed by the Appellate Bench of the Small Causes Court in (A-1) Appeal No. 9 of 2011. By these orders, the Courts below have decreed the suit instituted by the respondents, hereinafter referred to as 'plaintiffs', under section 12 of the Bombay Rents Hotel and Lodging House Rates Control Act, 1947 (for short, 'Act'). In addition to this ground, the learned trial Judge has decreed the suit under section 13(1)(g) of the Act. The Appellate Court, however, decreed the suit under section 12 of the Act.

3. In support of this application, Mr. Borkar submitted that the suit property is situate in Survey no. 28/6, admeasuring 2 Acres 15 Gunthas. By Notification dated 12.12.1986 which was published in Maharashtra Government Gazette dated 22.1.1987, entire survey no.28/6 is declared as slum area under section 4 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act,1971 (for short, 'Slum Act'). He has taken me through the pleadings of the parties as also oral evidence. He submitted that in the cross examination, the plaintiffs' witness admitted that the suit premises is standing on land bearing Survey No.28, Hissa No.6 (Part), C.T.S.No. 481. He denied that Survey No.28, Hissa No.6 (part), C,T..S. No.481 is declared as slum.

4. Mr. Borkar submitted that the Courts below have not

considered admission of the plaintiffs' witness.

5. Mr.Thorat submitted that basically the defendant is disputing relationship of landlord and tenant. The defendant claims to be owner of the suit premises. He further submitted that during the course of cross examination, defendant's witness admitted that survey number of the suit premises is 481. He again stated that it is survey no.28, Hissa no.6, and C.TS.no.481.

6. After arguing the application for quite some time, Mr Throat submitted by consent of the parties, the order passed by the appellate court may be set aside, thereby restoring appeal of the appellate court for deciding it afresh. He states that respondent no.3 Ms.Lalita Vyanktesh Gujar is present in the Court. He has tendered photocopy of Pan Card which is taken on record and marked 'X" for identification. Upon taking instructions from her, he submits that by consent of the parties, the appellate Court order may be set aside, thereby restoring appeal of the appellate court for deciding it afresh.

7. In view thereof, by consent of the parties, application is disposed of in the following terms:

(i) Judgment and decree dated 3.2.2016 is quashed and set aside and (A-1) Appeal No. 9 of 2011 is restored to the file of Appellate Court along with Interim Order dated 1.8.2011 below Exhibit-5 in the appeal, for deciding it afresh.

(ii) Parties agree that they will appear before the Appellate Court on 25.10.2016 and for that purpose no fresh notice be issued to them

(iii) The Appellate Court is requested to decide the appeal as early as possible and preferably within three months from the date of appearance of the parties. The Appellate Court will decide the appeal uninfluenced by the observations made herein. All contentions of the parties on merits are expressly kept open.

(iv) Rule is made absolute in the aforesaid terms with no order as to costs. In view of disposal of the Application, Civil Application No.299 of 2016 for stay does not survive and the same is disposed of.

(v) The Court places on record appreciation of services rendered by Mr. Borkar. Order accordingly.

(R.G.KETKAR, J.)