

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.207 OF 2015

Vishwanath Kashinath (Dadasaheb) Mahadik ... Applicant
Vs.
Ramabai Bhiva Bhoir and others ... Respondents

Mr. Rohan Cama i/b. Mr. G. K. Tripathi for Applicant.
Mr. S. R. Ganbavale for Respondents.

CORAM : R. G. KETKAR, J.
DATE : JANUARY 18, 2016

P.C. :

Heard Mr. Cama, learned Counsel for applicant and
Mr. Ganbavale, learned Counsel for respondents.

2. Mr. Cama submitted that the Suit instituted by respondents is decreed only on the ground of reasonable and bonafide requirement as contemplated by Section 16(1)(g) of the Maharashtra Rent Control Act, 1999. He invited my attention to paragraphs 1, 4 and 6 of the written statement. In paragraph 1, it is asserted that written statement is being filed by Shri Vishwanath Kashinath Mahadik, the tenant in use and occupation of House No.587, Ghatla Village, Chembur, Mumbai 400 071 (for short 'suit premises'). In paragraph 4, it is submitted that Vishwanath's father along with his two brothers had acquired the tenancy of suit premises, and after their lifetime, Vishwanath, his mother, wife, son and aunt are the persons in use and occupation of the suit premises. In paragraph 6, Vishwanath stated that he is a monthly tenant in respect of the suit premises.

3. Mr. Cama submitted that during the pendency of the Suit, defendant No.1 filed application for amending the written statement. By

order dated 26.07.2010, the application for amendment was rejected. The Suit was eventually decreed by the trial Court on 08.11.2012. Aggrieved by that decision, Appeal was preferred and in Appeal memo, grounds (g) to (q) were raised challenging the correctness of order dated 26.07.2010 rejecting the application for amendment. He submitted that though this contention was specifically advanced before the Appellate Bench, the same is not dealt with. He invited my attention to paragraph 8 of the impugned order. He seeks permission to withdraw this application with liberty to file Review Petition on these grounds.

4. On the other hand, Mr. Ganbavale submitted that the order dated 26.07.2010 was not challenged by the applicant. He further submitted that no such contention challenging validity of order dated 26.07.2010 was advanced before the Appellate Bench. Mr. Cama states that within one week from today, applicant will file Review Petition before the Appellate Bench. Mr. Ganbavale submits that within two weeks from the service of the Review Petition, respondents will file their reply.

5. Mr. Cama further states that the applicant and his following family members are in possession of the suit premises and nobody else is in possession:

- i. Vaishnavi Vishwanath Mahadik,
- ii. Subhadrabai Kashinath Mahadik,
- iii. Vedant Vishwanath Mahadik,
- iv. Leelavati Baburao Mahadik,
- v. Jayendra Bhalchandra Gaikwad,
- vi. Hitendra Bhalchandra Gaikwad,
- vii. Bhalchandra Waman Gaikwad, and
- viii. Bhavna Bhalchandra Gaikwad.

6. He further submits that applicant has neither created third party interest nor parted with possession of the suit premises and that he will hereafter neither create third party interest nor part with possession of the suit premises.

7. In view thereof, Application is allowed to be withdrawn in the following terms:

a. Applicant shall file Review Petition within one week from today and serve copy in advance on the other side;

b. Respondents shall file reply within two weeks from receipt of the Review Petition;

c. The Appellate Bench is requested to decide the Review Petition within three months from the date of its filing;

d. If no Review Petition is filed within one week from today, the liberty granted shall stand withdrawn automatically without further reference to the Court.

e. All contentions of the parties are expressly kept open;

8. In view thereof, notwithstanding withdrawal of the Application, the ad-interim order dated 16.04.2015 shall remain in force for a period of 4 months from today subject to applicant neither creating third party interest nor parting with possession of the suit premises. Application is disposed of accordingly.

9. All the parties including the trial Court shall act on the authenticated copy of this order.

(R. G. KETKAR, J.)