

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 6875 OF 2016

Shri Ramdas Maruti Dighe
And another

...Petitioners

Versus

Shri Prakash Gajanan Dhakate

...Respondent

With
Civil Application No.1476 of 2016
IN
Writ Petition No. 6875 OF 2016

....

Mr.V.A. Shastry, Advocate for the Petitioners.

Mr. Deepak Gupte, Advocate for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 14th SEPTEMBER, 2016

P.C.

1. Heard Mr. Venkatesh Shastry, learned Counsel for the petitioners and Mr. Deepak Gupte, learned Counsel for the respondent, at length.

2. By this Petition, under Article 227 of the Constitution of India, the petitioners hereinafter referred to as 'defendants' have challenged the judgment and decree dated 21.9.2013 passed by the learned District Judge-17, Pune in Civil Appeal No.596/2010. By that order, the learned District Judge allowed the appeal preferred by the

respondent, hereinafter referred to as 'plaintiff' and quashed and set aside the judgment and decree dated 17.7.2010 passed by the learned 7th Additional Judge, Small Causes Court, Pune in Regular Civil Suit No.354/2006. The learned District Judge decreed the suit and directed the defendants to hand over vacant possession of the premises more particularly described in para-1 of the plaint.

3. Rule. Mr. Gupte waives service. At the request and by consent of the parties, Rule is made returnable forthwith and the petition is taken up for final hearing.

4. In support of this Petition, Mr. Shastri submitted that the defendants were not heard by the learned District Judge. He submitted that by order dated 21.6.2013 below Exhibit-1, learned District Judge directed hearing of the appeal to proceed *exparte* against the defendants. He submitted that on 6.3.2006, the plaintiff issued demand notice claiming arrears of rent for the period from 1.1.2000 to 31.3.2006 (75 months) @ Rs.35/- per month which comes to Rs.2625/-. He submitted that the defendants have remitted amount of Rs.2590/- by demand draft dated 6.2.2006. In other words, he submitted that the defendants were not in arrears of rent of more than 6 months and the learned District Judge was not justified in decreeing the suit on that ground, more so when the defendants were absent.

5. On the other hand, Mr. Gupte supported the impugned order. He submitted that as the defendants were consistently remaining absent, the learned District Judge passed order on 21.6.2013 to proceed ex parte against them. He submitted that the demand draft was sent by defendant No.2 and not by defendant No.1 and, therefore, the plaintiff was justified in not accepting that demand draft.

6. I have considered the submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Perusal of the impugned order and in particular paragraph-10 shows that the defendants were proceeded ex parte vide order below Exhibit-1 dated 21.6.2013. The defendants contend that they have remitted amount of Rs.2590/- by demand draft dated 6.2.2006 as against demand of Rs.2625/- which includes rent for the month of February, 2006. On the other hand, the plaintiff contends that defendant No.1 is a tenant and demand draft was sent by defendant No.2. Plaintiff, therefore, did not accept that demand draft. I do not find it necessary to deal with this submission as the same was not dealt by the learned District Judge as also for the order that I propose to pass. As the defendants were not heard by the learned District Judge, in my opinion, this is a fit case for remitting the matter to District Court.

7. Mr. Gupte states that the plaintiff's son Mr. Rajesh

Prakash Dhakate is present in Court. He has tendered photo copy of his PAN Card, which is taken on record and marked 'X' for identification. Upon taking instructions from him, Mr. Gupte consents for setting aside the impugned order and restoration of the appeal. He submits that the parties may be directed to appear before the District Court on 26.9.2016 and for that purpose no fresh notice be issued to them. District Court may be directed to dispose of the appeal in a time bound manner having regard to the fact that the plaintiff is a senior citizen. Mr. Shastry has no objection for adopting this course and assures that the defendants will render full cooperation for disposing of the appeal in a time bound manner.

8. In view thereof, by consent of parties, Petition is disposed of in following terms :

- i. Impugned judgment and decree dated 21.9.2013 passed by the learned District Judge-17, Pune in Civil Appeal No.596/2010 is set aside. Civil Appeal No.596/2010 is restored to the file of District Court.
- ii. Parties agree that they will appear before the District Court on 26.9.2016 and for that purpose no fresh notice be issued to them.
- iii. Having regard to the fact that the suit is instituted in the year 2006 and the District Court decided the appeal in 2013, learned District Judge is requested

to decide the appeal as expeditiously as possible and preferably within three months from the date of appearance of the parties.

- iv. All contentions of the parties on merits including those recorded herein are expressly kept open.
- v. Rule is made absolute in aforesaid terms with no order as to costs.
- vi. In view of disposal of Writ Petition, Civil Application No.1476/2016 for stay does not survive and the same is disposed of.
- vii. All parties, including District Court, shall act upon the authenticated copy of this order.

(R. G. KETKAR, J.)

Deshmane (PS)