

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 725 OF 2015

Hussain Mohamed Bagwan ...Applicant
Versus
Sayyed Fakir Mohamad Hasan ...Respondent

....
Mr.Jitendra M. Pathade, Advocate for the Applicant.
Mr. D.B. Savant, Advocate for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 23rd June, 2016

P.C.

1. Heard Mr.Pathade, learned Counsel for the applicant and Mr.Savant, learned Counsel for the respondent, at length.
2. Rule. Mr. Sawant waives service. At the request and by consent of the parties, Rule is made returnable forthwith and the application is taken up for final hearing.
3. By this application under Section 115 of Code of Civil Procedure Code, 1908 (for short, 'C.P.C.'), the applicant, hereinafter referred to as the 'defendant', has challenged the judgment and decree dated 11.10.2013 passed by the learned Additional Judge, Small Causes Court, Pune in Civil Suit No.453/2012 as also the judgment and decree dated 14.11.2014

passed by the learned District Judge-9, Pune in Civil Appeal No.653/2013. By these orders, the Courts below decreed the suit instituted by the respondent, hereinafter referred to as the 'plaintiff', and directed the defendant to hand over vacant possession of two rooms situate in house No.43/44, C.T.S. No.963, Yerwada, Pune (for short, 'suit premises') to the plaintiff. The plaintiff has instituted the suit claiming possession of the suit premises on the ground that he is a retired Government Servant and requires the suit premises reasonably and bonafide for his family. His grandsons are college going students and the premises presently in their possession for residence is not sufficient. The defendant is causing nuisance and annoyance to the adjoining neighbours. The defendant has also sub-let the suit premises.

4. The suit summons was duly served on the defendant on 26.11.2012 vide Exhibit-9. The defendant appeared on 27.11.2012 through Advocate. On that day, his Advocate applied for time for filing say and written statement vide application at Exhibit-12. It was allowed and the matter was posted for filing written statement on 10.12.2012. On that day, the defendant

filed Vakalatnama of Advocate shri Agarwal and application for filing written statement. Vakalatnama of Advocate Shri Agarwal at Exhibit-14 did not bear the signature of the defendant. The application for granting time to file written statement at Exhibit-15 was rejected and on the same day i.e. on 10.12.2012, the trial Court passed 'no-say/no-written statement' order. Trial Court thereafter proceeded to decree the suit. Aggrieved by that decision, the defendant preferred appeal which is dismissed on 14.11.2014. It is against these decisions, the defendant has instituted the present Civil Revision Application. In view of Section 7 of C.P.C., leave to convert this Civil Revision Application into Writ Petition is granted. Amendment shall be carried out forthwith. Office to number the Writ Petition.

5. Having regard to the fact that the learned trial Judge passed the order of 'no written statement/'no say' on 10.12.2012, when admittedly the defendant appeared on 27.11.2012, said order was in the teeth of provisions of Order 8 Rule 1 of C.P.C.. During the course of hearing of this application/petition, I suggested to Mr. Savant whether the respondent/plaintiff is agreeable for setting aside the impugned

orders thereby restoring the suit for proceeding the same in accordance with law. Mr. Savant states that the respondent is present in Court. Upon taking instructions from him, he submits that by consent the impugned orders may be set aside. He, further submits that having regard to the fact that the plaintiff is a retired Government Servant as also one of the grounds of eviction is reasonable and bonafide requirement, the trial Court may be directed to dispose of the suit in a time bound manner.

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

- [i] The impugned orders i.e. judgment and decree dated 11.10.2013 passed by the learned Additional Judge, Small Causes Court, Pune in Civil Suit No.453/2012 as also the judgment and decree dated 14.11.2014 passed by the learned District Judge-9, Pune in Civil Appeal No.653/2013 are quashed and set aside. Civil Suit No.453/2012 is restored to the file of the trial Court to its original position.
- [ii] The defendant shall file written statement within four

weeks from today by giving advance copy to the other side. It is made clear that in case the defendant does not file written statement within four weeks from today, the impugned orders shall stand revived without further reference to the Court.

- [iii] If the written statement is filed within four weeks from today, the same shall be taken on record.
- [iv] Having regard to the fact that the plaintiff is a retired Government Servant and one of the grounds for eviction is reasonable and bonafide requirement, the plaintiff is at liberty to take out an application for deciding the suit in a time bound manner. In case such an application is taken out, having regard to the year of the suit as also having due regard to the fact that the plaintiff is a Government Servant and requires the suit premises reasonably and bonafide, the learned trial Judge will pass appropriate orders.
- [v] Rule is made absolute in aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)