

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION**

WRIT PETITION NO. 5449 OF 2016

Shri Jaywant Jayram Jage & Anr.

.... Petitioners

Versus

Shri Ramkrishna Lxman Patil & Ors.

.... Respondents

Onkar Warage for Petitioners.

Ms. Gauri Godse for Respondent No.1.

***CORAM : N. M. Jamdar J.
Tuesday 20 December 2016***

ORAL ORDER

. By this Petition, the Petitioners have challenged the order dated 12 April 2016 passed by the learned Civil Judge Junior Division, Alibag below Exh. 306 in Regular Civil Suit No. 12 of 1994.

2. By the impugned order, the learned Civil Judge has rejected the application filed by the Petitioners/Defendant Nos.1 and 2 to grant permission to conduct cross examination of the Plaintiff's witness.

3. The Respondents/Plaintiffs instituted a Regular Civil Suit No. 12 of 1994 in the Court of Civil Judge Junior Division, Alibag seeking possession of the suit premises. The issues were framed in the said suit in respect of breach of terms and conditions of the rent note by the Petitioners, construction of a structure, non-payment of rent, subletting and bonafide requirement of the Respondents/Landlord. The suit was decreed by the learned Civil Judge by Judgment and Order dated 21 August 2008. In the Appeal bearing No. 165 of 2008 filed by the Petitioners, the learned District Judge set aside the Judgment and Order dated 21 August 2008 and remanded the proceedings to the trial Court. Upon remand, the Respondents took a stand that Respondents will not lead any fresh evidence. Taking note of this stand, the learned Civil Judge by the impugned order, rejected the application of the Petitioners for cross examination.

4. The learned Counsel for Petitioners submitted that the learned District Judge has directed a de novo trial with an opportunity to adduce fresh evidence. Though the learned District Judge has used the phrase “de novo trial”, in the operative portion, the entire order will have to be seen the reason as to why the suit was remanded. The learned District Judge found that simultaneous

stands were taken by the Respondents/Landlord that the suit is under the order of section 9 of the Code of Civil Procedure of as well as under the provisions of Bombay Rent Act. Therefore, the Respondents/Landlord was directed to make the choice clear as to whether suit is filed invoking provisions of Section 9 of the Code of Civil Procedure or Section 28 of the Bombay Rent Act. It was on this limited issue that the matter was remanded. Therefore, there is no reason whatsoever as to why the denovo trial needed to be conducted.

5. As far as giving an opportunity to the parties to adduce the fresh evidence is concerned, Respondents/Landlord has chosen not to lead any fresh evidence, as according to the Respondents/Landlord, the evidence already led is sufficient. There is no restraint on the Petitioners to lead their evidence. If permission is granted to the Petitioners to again cross examine the Respondents/Landlord, the proceedings which are pending since the year 1994 i.e. 22 years back will get protracted further. However, to ensure whether any prejudice will cause to the Petitioners, I had directed the learned Counsel for parties to place on record the evidence already recorded. The perusal of the cross examination indicates that the Petitioners were fully aware of the case put up against the Petitioners under the provisions of Bombay Rent Act and have conducted a cross examination on those lines.

6. In the circumstances, I do not find that there is any error committed by the learned Civil Judge in interpreting the order passed by the learned District Judge and not permitting the Petitioners to conduct a cross examination of the Respondents/Landlord again. No interference is warranted. Writ Petition is accordingly rejected.

7. Considering the fact that the suit is pending since 22 years, the learned Civil Judge will grant a priority to the disposal of the suit.

(N. M. Jamdar, J.)