

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition NO. 7156 OF 2016

Mr. Bhalchandra S. Chakranarayan
And Anr

...Petitioners

Versus

Mr. Sarwar Rahiman Kothiwale
And Ors

...Respondents

....

Mr.T.D. Deshmukh, Advocate for the Petitioners.
Mr.Suresh Dubey, Advocate for Respondents No.1 to 3.

....

CORAM : R. G. KETKAR, J.
DATE : 08th August, 2016

P.C.

1. Heard Mr. T.D. Deshmukh, learned Counsel for the petitioners and Mr.Suresh Dubey, learned Counsel for respondents No.1 to 3, at length.

2. On the oral application made by Mr. Deshmukh, leave to delete respondent No.4 is granted as respondents No.1 to 3, being original plaintiffs, are the only contesting respondents. In view thereof, leave to delete respondent No.4 is granted. Amendment shall be carried out forthwith.

3. Rule. Mr. Dubey 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. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as 'defendants No.2 and 3', have challenged the judgment and decree dated 30.4.2016 passed by the learned Ad-hoc District Judge-3, Pune in Regular Civil Appeal No.659/2009. By that order, learned District Judge allowed the appeal and quashed and set aside the judgment and decree dated 30.9.2009 passed by the learned 7th Additional Judge, Small Causes Court, Pune in Civil Suit No.22/1996. The learned District Judge decreed the suit and directed the defendants to vacate the suit premises within one month from the date of the order.

5. In support of this petition, Mr. Deshmukh submitted that the plaintiffs have instituted the suit against defendants No.1 to 3 i.e. (1) The Principal, The Bishop School, (2) Shri Bhalchandra S. Chakranarayan and (3) Shri Henry Bhaskar S. Chakranarayan for recovery of possession of two rooms and the passage on the ground floor of bungalow No.5, Kahur Road, Pune 1, as more particularly described in paragraph-1 of the plaint under Sections 13(1)(k), 13(1)(g), 13(1)(e) and 13(1)(a) of the Bombay Rents, Hotel and Lodging House Rates Control Act,

1947 (for short, 'Act'). The learned trial Judge dismissed the suit. Aggrieved by this decision, the plaintiffs preferred appeal. The learned District Judge decreed the suit under Sections 13(1)(k), 13(1)(g), 13(1)(e) and 13(1)(b) of the Act. He submitted that the Appellate Court did not consider and discuss the evidence on record and in particular correspondence relied upon by defendants No.2 and 3 in the affidavit dated 4.10.2004. He submitted that the Appellate Court being the last fact finding Court ought to appreciate the entire evidence on record and record independent findings, more so, when the Appellate Court is reversing the trial Court's decree.

6. Mr.Dubey was unable to defend the impugned order. He states that respondent No.1 herein is present in Court. Upon taking instructions from him, he concedes for setting aside the impugned order. He further submits that the parties may be reserved liberty to adduce additional evidence, if they so desire. In view thereof, by consent of the parties, the Petition is disposed of in following terms:

- (i) Impugned judgment and decree dated 30.4.2016 passed by the learned Ad-hoc District Judge-3, Pune in Regular Civil Appeal No.659/2009 is set aside;

- (ii) Regular Civil Appeal No.659/2009 is restored to the file of the District Court;
- (iii) Parties are at liberty to adduce additional evidence, if they so desire. In that event, Appellate Court will either take such evidence or direct the trial Court from whose decree the appeal is preferred, to take such evidence and to send it when taken to the Appellate Court.
- (iv) Parties agree that they will appear before the District Court on 29.8.2016 and for that purpose no fresh notice be issued to them.
- (v) Parties assure that they will extend full cooperation for recording of additional evidence as also for disposal of the appeal expeditiously and will complete recording of additional evidence within three months from the date of appearance of the parties.
- (vi) All contentions of the parties are expressly kept open.
- (vii) Appellate Court is requested to dispose of the appeal within three months from receipt of additional Evidence, if any.
- (viii) Rule is made absolute in aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)