

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

CIVIL REVISION APPLICATION NO.340 OF 2016

Madanlal Kanhayalal Oswal

Applicant.

Vs

Nitin Vasant Redij and Ors

.. Respondents

Mr. R.A.Thorat, Senior Advocate a/w Mr. Sachindra B. Shetye,
Advocate for Applicant.

Mr.Tejas Dande, Advocate for Respondent no.1.

CORAM : R.G.KETKAR,J.
DATE : 04/07/2016

PC:

1. Heard Mr. R.A.Thorat, learned senior counsel for the applicant and Mr. Tejas Dande, learned counsel for the respondent no.1 at length. At the request of Mr. Thorat, leave to delete respondents no. 2 to 4 is granted as respondent no.1 being the original plaintiff is the contesting respondent. Amendment shall be carried out forthwith.

2. Rule. Mr. Dande waives service for respondent no.1. At the request and by consent of the parties, Rule is made returnable forthwith and Application is taken up for final hearing.

3. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicant, hereinafter referred to as 'defendant no.1', has challenged the Judgment and decree dated 5.5.2012 passed by the learned II Jt. Civil Judge,

Jr.Dn., Ratnagiri in Regular Civil Suit No. 201 of 2009 as also the Judgment and decree dated 26.4.1979 passed by the learned District Judge-2, Ratnagiri in Civil Appeal No.124 of 2012. By these orders, the Courts below decreed the suit instituted by respondent no.1, hereinafter referred to as 'plaintiff', under section 16 (1)(g) of the Maharashtra Rent Control Act, 1999 (for short, 'Act').

4. In support of this Application, Mr. Thorat submitted that during the course of cross examination of the plaintiff's witness, he was confronted with Release Deed dated 9.7.2009 and other documents. The learned trial Judge, however, did not mark these documents as exhibits. After the suit was decreed, during the pendency of the Appeal, Application Exhibit-49 was taken out under Order 41, Rule 27 of C.P.C for production of additional evidence. Without deciding that Application, Appeal was dismissed on 5.1.2016. In view thereof, Civil Revision Application No. 84 of 2016 was instituted in this Court. By order dated 15.2.2016, the Civil Revision Application was allowed with direction to the learned District Judge to consider application Exhibit-49 along with the Appeal and also give appropriate opportunity to both the sides in respect of Application Exhibit-49.

5. Mr. Thorat submitted that by order dated 14.3.2016, the learned District Judge allowed the Application. He submitted that while deciding the Appeal, the learned District Judge did not

advert to the documents produced along with Exhibit-49. Mr. Thorat further submitted that during the pendency of the Appeal, Application Exhibit-77 was filed to place on record that the plaintiff's mother Vasanti had issued quit notice to him. During the pendency of the proceedings, the plaintiff's mother Vasanti died on 6.6.2013 and this fact is required to be taken into account. Mr. Thorat submitted that the learned District Judge has not considered documents produced along with Exh.49 as also effect of death of the plaintiff's mother Vasanti.

6. Mr. Dande supported the impugned orders. He invited my attention to the Will dated 20.4.1996 executed by Vasanti and in particular paragraph 1 of that Will in respect of Municipal House no.1934. He further states that respondent no.1-plaintiff is present in the Court. Upon taking instructions from him, he submits that by consent of the parties, impugned order may be set aside and the Appeal Court may be directed to dispose of the Appeal in a time bound manner. Learned counsel appearing for the parties state that the parties will appear before the learned District Judge on 18.7.2016 without issuing notice to them and produce the authenticated copy of this order. Mr. Dande has placed on record photocopy of Aadhar Card of respondent no.1 - Nitin Vasant Redij which is taken on record and marked "X" for identification.

7. In view thereof, by consent of the parties, Petition is

disposed of in the following terms:

- (i) Impugned order passed by the learned District Judge dated 26.4.2016 quashed and set aside. Civil Appeal No.124 of 2012 is restored to the file of the learned District Judge.
- (ii) Parties agree that they will appear before the learned District Judge on 18.7.2016 and for that purpose no fresh notice be issued to them.
- (iii) Learned District Judge, while deciding the Appeal, will consider effect of application at Exhibit-77 as also documents produced along with Application Exh.49. The learned District Judge will consider the contentions recorded in this order and any other contention that is available to the parties. All contentions of the parties on merits are expressly kept open.
- (iv) Having regard to the fact that the suit is decreed under section 16(1)(g) of the Act, as also for the second time matter is remitted, the learned District Judge is requested to dispose of the appeal as expeditiously as possible and in any case within three months from the date of appearance of the parties.
- (v) It is needless to observe that the Appeal Court will decide the appeal uninfluenced by the observations made in this order.

- (vi) Rule is made absolute in the aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)