

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.775 OF 2014

Khatav Alias Rajendra Ramji Thakkar and others ... Applicants
Vs.
Popatlal Lalchand Navalakha ... Respondent

Mr. R. N. Sanghavi for Applicants.

CORAM : R. G. KETKAR, J.
DATE : JULY 25, 2016

P.C. :

Heard Mr. Sanghavi, learned Counsel for applicants at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicants have challenged the judgment and decree dated 21.09.2007 passed by the learned Judge, Small Causes Court, Pune in Civil Suit No.454 of 2005 as also the judgment and decree dated 14.03.2014 passed by the learned District Judge-1, Pune in Civil Appeal No.727 of 2007. By these orders, the Courts below decreed the Suit instituted by the respondent-plaintiff for possession of the suit property under the provisions of Maharashtra Rent Control Act, 1999 (for short 'Act').

3. Respondent-plaintiff instituted Suit for recovery of possession of C.T.S.No.189-B of Ganesh Peth, Pune inter alia on the ground that defendants are defaulters, plaintiff reasonably and bonafide requires the suit premises for the purpose of demolition and making construction and non-user of the suit premises without sufficient cause as contemplated by Sections 15, 16(1)(g) and 16(1)(n) of the Act respectively. The learned trial Judge decreed the Suit on the ground of default under Section 15 of the Act. Aggrieved by this decision, defendants preferred

Appeal, which was dismissed by the learned District Judge. While dismissing the Appeal, in paragraph 7, the learned District Judge noted that the only question that was raised in the Appeal during argument is that the Suit was bad and not maintainable, as no leave of the High Court was obtained for filing the Suit. The learned District Judge reproduced order dated 10.03.1999 and observed that this Court permitted plaintiff as a receiver to prosecute Suits against the tenants.

4. Mr. Sanghavi submitted that in the appeal memo, the findings recorded by the learned trial Judge on the ground of default under Section 15 were specifically challenged. Even in the Appeal, the said point was agitated. Paragraph 7 of the order of the learned District Judge reads thus,

7] The only question that is raised in this appeal during argument is that the suit was bad and not maintainable, as no leave of the Hon'ble High Court was obtained for filing it. In earlier proceeding the respondent / plaintiff was appointed as a receiver. It would be useful to reproduce the said order dated 10.03.1999, which reads thus -

“Respondent No.1 is appointed as Receiver in respect of the suit property for the purposes of recovery of rent and payment of taxes etc. Respondent No.1 as Receiver may also prosecute suits against tenants but no third party shall be inducted without prior permission of this Court”.

5. In view thereof, it is not possible to accept submission of Mr. Sanghavi that defendants raised contention as regards trial Court's findings in respect of default under Section 15. Realizing this position, Mr. Sanghavi seeks permission to withdraw this C.R.A. with liberty to file review before the learned District Judge.

6. Hence, on the motion made by Mr. Sanghavi, C.R.A. is allowed to be withdrawn with liberty as prayed for. It is made clear that the

grant of liberty shall not be construed as an expression of merits either way. All contentions of the respondent including on the question of maintainability are expressly kept open. C.R.A. is allowed to be withdrawn with liberty as prayed for. Order accordingly.

(R. G. KETKAR, J.)

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