

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 10114 OF 2016

Siddharam Parshuram Takale

And another.

...Petitioners

Versus

Aadweshwar Gurubasayya Hiremath

...Respondent

....

Mr.Surel S. Shah, Advocate for the Petitioners.

Mr.Anand S. Kulkarni, Advocate for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 30th August, 2016

P.C.

1. Not on board. At the request of Mr.Shah, taken up for admission.
2. Heard Mr.Surel Shah, learned Counsel for the petitioners and Mr.Anand Kulkarni, learned Counsel for the respondent, at length.
3. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as the 'defendants' have challenged the judgment and order dated 15.6.2016 passed by the learned District Judge-2, Solapur below Exhibit-34 in Civil Appeal No.235/2015. By that order, the learned District Judge rejected the application filed by the defendants for setting aside the trial Court's order and remanding the matter to the trial Court for framing issue regarding comparative hardship

and also recording finding on said issue.

4. In support of this petition, Mr. Shah has invited my attention to issue No.8 framed by the trial Court which is to the following effect :

“whether plaintiff will suffer irreparable loss if possession of suit shop not given to him ?”

5. He has also invited my attention to paragraph-35 of the trial Court's judgment. He submitted that basically issue No.8 framed by the learned trial Judge did not deal with the question of comparative hardship. The learned trial Judge held that the plaintiff proved that he requires the suit shop bonafide and reasonably and that greater hardship will be caused to the plaintiff in case possession is not given. Aggrieved by this decision, the defendants preferred appeal. Pending the appeal, they took out application at Exhibit-34 on 16.6.2016 for setting aside trial Court's order and for framing issue as regards comparative hardship as per Section 16(2) of the Maharashtra Rent Control Act, 1999 (for short, 'Act') and for recording finding thereon. By the impugned order, the learned District Judge rejected the application. He has invited my attention to paragraph-6 and submitted that the learned District Judge held that issue No.8, though, was not exactly in terms of Section 16(2) of the Act, dealt with issue of comparative hardship. He, therefore, submitted that the impugned order deserves to be set aside thereby allowing application Exhibit-34.

6. On the other hand, Mr. Kulkarni has tendered copy of

issues framed on 24.7.2013, which is taken on record and marked 'X' for identification. Issue No.8 reads thus :

“ ८) दावा मिळकतीचा ताबा न मिळाल्यास वादीस कष्टावस्था पोचेल, असे वादी सिद्ध करतात काय ? ”

7. If the word 'कष्टावस्था' in Marathi is translated into English it means 'Hardship'. Thus, issue No.8, reproduced above, is not faithful translation of the word 'कष्टावस्था'. In view thereof, I do not find that the learned District Judge committed any error in dismissing the application Exhibit-34. Nonetheless by way of abundant caution, it is clarified that while deciding the appeal, the learned District Judge will frame point as regards comparative hardship and record finding against this point. Subject to this clarification, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)