

Mr. A. S. Khandeparkar with Ms Apoorva Khandeparkar i/b. Ms Shilpa Joshi for Applicant.
Mr. R. S. Apte, Senior Advocate a/w. Mr. Ajit S. Karwande for Respondent No.1.
Mr. D. B. Lonkar for Respondents No.4, 5, 8 to 11.

P.C. :

Heard Mr. Khandeparkar, learned Counsel for applicant, Mr. Apte, learned Senior Counsel for respondent No.1 and Mr. Lonkar, learned Counsel for respondents No.4, legal representatives of 5, 8 to 11 at length. On the motion made by Mr. Khandeparkar, leave to delete respondents No. 2 and 12 is granted. Rule. Learned Counsel for respective parties waive service. At the request and by consent of the parties, Rule is made returnable forthwith and the Application is taken up for final hearing.

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Judge decreed the Suit instituted under Sections 12 and 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Act'). Aggrieved by that decision, defendants No.1 and 3 preferred Appeal. By order dated 01.08.2015, the appellate Court decreed the Suit only under Section 13(1)(g) of the Act. It is against these orders, defendant No.3 has instituted the present Application.

3. Mr. Khandeparkar has taken me through the assertions made by the respondent No.1, hereinafter referred to as 'plaintiff', in paragraphs 12, 13 and 14 in relation to the ground of eviction under Section 13(1)(g) of the Act as also evidence of P.W.1 Ganpat Sakharam Shete, and in particular paragraph 10 of examination-in-chief and cross-examination of P.W.1. He submitted that the appellate Court has not considered evidence of P.W.1 and in particular cross-examination. He has invited my attention to the findings recorded by the appellate Court in paragraph 17 onwards, and in particular paragraphs 20 and 21 thereof. He further submitted that plaintiff did not obtain consent of the other trustees. He, therefore, submitted that the Application requires consideration.

4. On the other hand, Mr. Apte supported the impugned orders. He submitted that the Courts below have concurrently held that plaintiff has established his requirement under Section 13(1)(g) of the Act. Plaintiff is residing in a tenanted premises in Dombivali. During the course of hearing, it was pointed out to Mr. Apte that the appellate Court being the last fact-finding Court has not discussed the evidence of P.W.1 in detail as is evident from the discussion in paragraphs 20 and 21. I, therefore, suggested to him as to whether the plaintiff is agreeable for setting aside the order of the appellate Court and restoring the appeal for *denovo* consideration.

5. Mr. Apte states that plaintiff is present in the Court. He has tendered photocopy of the identity card issued by the Election Commission of India, which is taken on record and marked 'X' for identification. Upon taking instructions from the plaintiff, Mr. Apte states that by consent, the order of the appellate Court may be set aside and the appeal may be restored for *denovo* consideration. He further states that as the Suit is instituted in the year 1984 on the ground of bonafide requirement, the appellate Court may be directed to dispose of the Appeal in a time bound manner.

6. In view thereof, by consent of the parties, Application is disposed of in the following terms:

a. Judgment and decree dated 01.08.2015 passed by the appellate Court is set aside and Appeal No.122 of 2012 is restored to the file of the appellate Court;

b. Parties agree that they will appear before the appellate Court on 08.08.2016, and for that purpose, no fresh notice be issued to them;

c. The appellate Court will decide the Appeal within three months from the date of appearance of the parties;

d. All contentions of the parties including those recorded in this order are expressly kept open;

e. Parties, including the appellate Court, to act on the authenticated copy of this order.

7. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)