

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 566 OF 2015

Central Cottage Industries Association
and Anr

...Applicants

Versus

Messrs. MIC Products and Ors.

...Respondents

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Mr.R.A. Thorat, Senior Advocate i/b. Ganesh Gole, Advocate for
the Applicants.

Mr.Vineet B. Naik, Senior Advocate a/w. Mr. Anup Dasgupta i/b.
Jhangiani Narula & Associates, for the Respondents.

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CORAM : R. G. KETKAR, J.

DATE : 15th June, 2016

P.C.

1. Heard Mr.R.A. Thorat, learned Senior Counsel for the
applicants and Mr.Vineet B. Naik, learned Senior Counsel for
the respondents, at length.

2. Rule. Mr. Naik waives service for the respondents. By
consent and at the request of parties, Rule is made returnable
forthwith and Civil Revision Application is taken up for final
disposal.

3. By this application under Section 115 of Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicants, hereinafter referred to as the 'defendants', have challenged the judgment and decree dated 7.8.2015 passed by the Appellate Bench of the Court of Small Causes at Bombay in A-1 Appeal No.37/2008. By that order, the Appellate Court partly allowed the appeal and quashed and set aside the judgment and decree dated 22.12.2006 passed by the learned Judge, presiding over Court Room No.31 of the Court of Small Causes at Bombay (Bandra Branch) in R.A.E. Suit No.1086/3597 of 1984 and partly decreed the suit to the extent of reasonable and bonafide requirement in respect of Godown No.2, Kamal Mansion, Arthur Bunder Road, Colaba, Mumbai – 400 005 (for short, 'suit premises') as contemplated by Section 13(1)(g) of the Bombay Rents, Hotel and Lodging Housing Rates Control Act, 1947 (for short, 'Act').

4. Mr. Thorat submitted that the respondents, hereinafter referred to as the 'plaintiffs', have instituted suit under Section 28 of the Act claiming possession of the suit premises on various grounds, such as, (i) Section 13(1)(b), (ii) whether the defendants have committed any act contrary to the provisions of

Section 108(o) of the Transfer of Property Act, 1882, (iii) Section 13(1)(g), and (iv) Section 13(1)(e) of the Act. The learned trial Judge dismissed the suit. Aggrieved by this decision, the plaintiffs preferred appeal which is allowed only under Section 13(1)(g) of the Act.

5. Mr. Thorat invited my attention to paragraph-11 of the cross-examination of PW-1 Ramlal Narayan Narang as also paragraph-36 of the examination-in-chief of DW-1 Tirath Singh Payara Singh to contend that there are other premises available to the plaintiffs which will meet their requirement. The Appellate Court however did not consider this aspect at all in the impugned order.

6. As against this, Mr.Naik invited my attention to paragraph-1A of the plaint wherein the plaintiffs No.3 to 6 have claimed possession under Section 13(1)(g) of the Act on account of their individual requirement. He also invited my attention to paragraph-8 of the examination-in-chief of the plaintiff where PW-1 deposed that he requires the suit premises for his personal occupation for the purpose of partnership business. In paragraph-14 of the cross-examination of PW-1, he stated that

there are three restaurant hotels in Ambestar Hotel, two on the ground floor and one on top at revolving on the top of the building. He also invited my attention to paragraph-7 of the examination-in-chief of PW-1 wherein he deposed that he requires the suit premises because he does not have any other premises to start operation relating to business of M/s. Big Products is not having any premises in Mumbai. The suit premises is the only premises that is available to the plaintiff. The registered address of M/s. Big Products is Ambassador Hotel for the purpose of correspondence. Mr. Naik also invited my attention to paragraph-31 of the impugned order, wherein the Appellate Court considered the evidence of the plaintiffs and observed that the witness of the plaintiffs has, in a very clear and unequivocal terms, deposed that the suit premises is required as he did not possess any other premises to start operation relating to his business namely M/s. Big Products and the suit premises is the only premises which would be suitable and convenient for conducting the business. He, therefore, submitted that no case is made out for invocation of powers under Section 115 of C.P.C..

7. During the course of hearing and in particular having regard to paragraph-11 of the cross-examination of PW-1 Ramlal Narang as also paragraph-36 of the evidence of DW-1 Tirath Singh Payara Singh, I indicated Mr. Naik that the appellate Court has not properly considered availability or otherwise of other premises to the plaintiffs for starting their business. Upon taking instructions from respondent No.3 Ramlal Sevaram Narang who is present in Court, he consents for setting aside the impugned order. He submitted that as the suit is instituted in the year 1984, the Appellate Court may be directed to dispose of the appeal in a time bound manner.

8. In view thereof, by consent of the parties, the impugned order is set aside and the appeal is restored to the file of the Appellate Court. The Appellate Court will consider the contentions recorded in this order and any other contentions that are available to the parties. In particular, the appellate Court will consider availability or otherwise of other premises to the plaintiffs. The parties agree that they will appear before the Appellate Court on 30.6.2016 and for that purpose no fresh notice be issued to them. Hence, the following order :

- (i) By consent, the impugned order is set aside and the appeal is restored to the file of the Appellate Court. The parties shall appear before the Appellate Court on 30.6.2016 and for that purpose no fresh notice be issued to them.
- (ii) The Appellate Court will consider the contentions of the parties recorded in this order and any other contentions that are available to them and decide the appeal within a period of three months from the date of appearance of the parties. All contentions of the parties are expressly kept open.
- (iii) Rule is made absolute in aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)