

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.

CIVIL APPLICATION NO.54 OF 2016

IN

MISC. CIVIL APPLICATION STAMP NO.17323 OF 2015

IN

WRIT PETITION NO.2258 OF 1998

(Vishwanath s/o Gangaramji Dhengekar (since deceased) through L.Rs. Smt. Kasturibai wd/o
Vishwanath Dhengekar and others ..vs.. Additional Collector, Akola and another)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATED : 19-01-2016

Heard Shri Sandeep B. Tiwari, learned Advocate for the applicants/original petitioners and Shri V.P. Gangane, learned Assistant Government Pleader for non-applicant No.1-Additional Collector.

2. In Writ Petition No.2258/1998, this Court, by the order dated 04-10-2010, observed that disputed questions of facts were raised by the parties in the petition and therefore, it would be appropriate to call for evidence on the points. Accordingly, the matter was sent to the House Rent Controller, Murtizapur for recording evidence and permitting the opponent party to cross-examine the witness.

3. Accordingly, the House Rent Controller, recorded the evidence and by the report dated 02-09-2014, concluded that the non-applicant No.2/landlord had

failed to prove the continuation of bonafide need as pleaded by him.

The non-applicant No.2/landlord filed return in the petition and raised challenge to the report of the House Rent Controller. It was argued on behalf of the non-applicant No.2/landlord that the return may be treated as counter petition. This Court accepted the submissions made on behalf of the non-applicant No.2/landlord and after examining the material on the record, concluded that the report dated 02-09-2014 submitted by the House Rent Controller was not sustainable and it came to be quashed.

4. The submission on behalf of the applicants/original petitioners is that the challenges raised by the non-applicant No.2/landlord in the return cannot be considered as counter petition, even as per the Bombay High Court Appellate Side Rules, 1960.

The applicants/original petitioners have sought review of the judgment on the above grounds. There is delay of 118 days in filing the review application.

The delay in filing the review application is condoned. The Civil Application No.54 of 2016 is allowed.

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The review application filed on behalf of the applicants/original petitioners does not point out any error apparent on the face of the record which necessitates the review of the judgment. The applicants/original petitioners were not represented when the matter was taken up for hearing. There is no explanation for this. It is recorded in the judgment dated 06-04-2015 that the learned Advocates for the respondents i.e. the learned Advocate for the non-applicant No.2/landlord and the learned Assistant Government Pleader representing the non-applicant No.1 were heard and then the matter was kept as part-heard on 06-04-2015. It is unexplained as to why the learned Advocate who represented the applicants/original petitioners in writ petition did not appear on the date on which the matter was partly heard and then again on 06-04-2015. It is relevant to state that the applicants have filed these applications by changing the lawyer. Again there is no justification for this conduct of the applicants.

2. On merits of the matter, the contention of the applicants/original petitioners that the return could not have been considered as counter petition, cannot be accepted in the facts of the present case. The writ petition was pending before this Court since 1998. This Court had sent the matter to the House Rent Controller

for recording evidence to give opportunity to the parties to substantiate their contentions. This Court had kept *seisin* over the matter by keeping the writ petition pending. Earlier the order of the subordinate authorities was in favour of the non-applicant No.2/landlord. The report dated 02-09-2014 submitted by the House Rent Controller was against the non-applicant No.2/landlord. In these facts, it would not have been proper to ask the non-applicant No.2/landlord to file fresh petition and the only course available to the non-applicant No.2/landlord in such circumstances, was to challenge the report dated 02-09-2014 submitted by the House Rent Controller and it is rightly challenged by incorporating the challenges in the return. It is recorded in the judgment that the non-applicant No.2/landlord had undertaken to pay necessary Court fees on the counter petition.

3. In these circumstances, the application does not require any consideration. Miscellaneous civil application is dismissed. In the circumstances, the parties to bear their own costs.

JUDGE