

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3778 OF 2017.

1. Shantilal Zumberlal Baldota,
Age : 82 years, Occup. Business,
R/o. 3586/87, Manik Chowk,
Dist. Ahmednagar.
2. Sumtilal Shantilal Baldota,
Age : 60 years, Occup. Advocate & Notary,
R/o. 3586/87, Manik Chowk,
Dist. Ahmednagar.
3. Rajendra Shantilal Baldota,
Age : 55 years, Occup. Business,
R/o. 3586/87, Manik Chowk,
Dist. Ahmednagar.
4. Ratnaprabha Ashok Baldota,
Age : 60 years, Occup. Business,
R/o. 3586/87, Manik Chowk,
Dist. Ahmednagar. ...PETITIONERS

Versus

Deepak Chandmal Varma,
Age : 56 years, Occup. Nil,
R/o Bhosle Akhada, Burudgaon
Road, In front of Raut Kirana
Store, Shelke Building,
Ahmednagar. ...RESPONDENT

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Mr. L. B. Pallod, Advocate for petitioners

Mr. D. K. Kulkarni, Advocate for Respondent (sole)

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CORAM : A.M. DHAVALA, J.

DATED : 11TH JULY, 2017.

ORAL ORDER :-

1. Rule. With consent of the parties matter is heard for final disposal.

2. By this petition under Article 227 of the Constitution the petitioners (original opponents) are challenging the order passed by 4th Jt. Civil Judge, Junior Division, Ahmednagar, dated 20.12.2016 below Exh.37 in Civil M.A. No.78/2013, whereby his challenge is to the rejection of the application under Order VII Rule 11 (a) and (d) of Code of Civil Procedure.

3. The petitioners are original landlords and the respondent is original defendant/tenant. Regular Civil Suit No.461/1988 was filed by the petitioners against the respondent for eviction on the ground of personal and bonafide requirement and non

user under the provisions of Bombay Rent Act. The said suit was decreed on both the grounds. The decision was confirmed by the First Appellate Court as well as in the Writ Petition No.4074/1991 by this Court, and it is reported that, it was confirmed by the Supreme Court as well. Thereafter, they, by filing execution petition, have obtained possession of the premises on 5th November, 2012. The respondent has contended that, the petitioners did not occupy the suit premises for use within stipulated period of 30 days, though, they had obtained the decree on the ground of personal and bonafide requirement. Hence, he filed application for restoration of possession but instead of filing it under Section 17 of Bombay Rent Control Act, it is filed under Section 18 of Maharashtra Rent Control Act. The petition herein have filed reply at exh.24 and contended that the decree was not granted only on the ground of personal and bonafide requirement but also on the ground of non user. It was also claimed that, the premises were brought in to use by them within the statutory period. The petitioners filed application Exh.37 claiming that,

this application was not maintainable, as the decree was obtained on two grounds. Personal benafide requirement as well as non user of the premises. It was claimed that, there is no cause of action and the claim was barred by the provisions of law. Hence, the application was moved under Order VII Rule 11 (a), (d) of Code of Civil Procedure. The learned Trial Judge, after hearing the parties held that, the application discloses cause of action and it was not barred by any law. Hence, the application was rejected.

4. Learned advocate for the petitioner Mr. Pallod argued that, the application ought to have been filed under Section 17 of Bombay Rent Act as the decree was passed under the Bombay Rent Act and not under the Maharashtra Rent Control Act. He further submitted that, the decree was passed on two grounds, The right of restoration of possession is available under Section 17 of Bombay Rent Act (Section 18 of Maharashtra Rent Control Act), if the decree is only on the ground of personal and bonafide requirement and is not

available to the tenant. When decree is on two grounds therefore the petition itself is not maintainable.

5. Per Contra, learned advocate for the respondent Mr. D. K. Kulkarni submitted that, the impugned order passed under Order VII Rule 11 is subject to revisional jurisdiction of the Court under Section 115. The application Exh.37 does not disclose any details as to how there was no cause of action and how the application was barred by the provisions of law. It was rightly decided by the trial Court.

6. Mr. Pallod The learned advocate for the petitioner relied on **Sukhdev Prasad Raghubir Vs. Rambhujarat Kshampati, 1983 Mh.L.J., Page 9**. In that case the revision was filed under Section 29 (3) of the Bombay Rent Act, against the order of rejection of amendment. While interpreting the provision of scope of Section 29 (3) of Bombay Rent Act, it is held that,

“5. The provisions of section 29 sub-section (3)

came for consideration of this Court in Bhagat Sing v. M/s. Prakash Roadlines Private Limited- Sapre J. agreed with the view taken by the Gujarat High Court in Shri Maharana Mills v. H. Manharrai and held that if the order, whose revision is sought, affects the substantive rights of the parties under the Bombay Rent Act, then alone the provisions of section 29(3) will be attracted.

7. If a party files any application under the provisions of Civil Procedure Code for procedural aspects, before the Trial Court holding jurisdiction under the Rent Act, revision under Section 29 (3) is not maintainable. In this case, the application was moved under Order VII Rule 11, not on procedural aspects but for curtailing substantive rights of the tenants. The tenant is claiming restoration of possession and if the application is allowed, the substantive right of the tenant under Section 17 would come to an end. Therefore, I hold that, the impugned order is amenable to the revisional jurisdiction under Section 29 (3) which lies before the district court.

8. The learned advocate for the petitioner further submitted that, existence of an alternative remedy is no bar to the

jurisdiction under Article 227 of the Constitution. However revisional jurisdiction in such case would be exercised only in gross violation of procedure or serious miscarriage of justice (*Sukhdev Prasad Raghubir Vs. Rambhujarat Kshampati, 1983 Mh.L.J., Page 9*). I find that, the present case does not fall in the above referred category and the petitioner ought to have filed revision before the District Court under Section 29 (3) to challenge the said order. The facts of the present case do not warrant exercise of powers under Article 227 of Constitution. Hence, the petition is dismissed. Rule is discharged.

9. On oral request, the petitioner is permitted to file revision before the District Court along with application for condonation of delay, which will be decided on its own merits.

[A. M. DHAVAL, J.]

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vjg/-