

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

915 WRIT PETITION NO. 15071 OF 2017

PANNALAL SHIVRAM ZANWAR
VERSUS
DNYANOBA DHONDUBA PATHAK AND OTHERS

...
Advocate for Petitioner : Mr. Anil S. Bajaj.

...

CORAM : **V. K. JADHAV, J.**
DATE : 21st December, 2017.

ORDER:

. Heard.

2 The Respondents / original Plaintiffs (landlord) have instituted Regular Civil Suit No.483 of 2004 for eviction and possession of the suit property bearing house property C.T.S. No.391/B/3 having Municipal House No.802 out of the property situated on the ground floor admeasuring about 19 x 14 ft. having 5 Khans, on the ground of *bona-fide* requirement, arrears of rent and on the ground that the Defendant / tenant is causing nuisance and annoyance to the neighbours. After contest, the learned Joint Civil Judge Senior Division, Ahmednagar by judgment and order dated 20th April, 2010, dismissed the said suit. Being aggrieved by the judgment and decree passed by the Trial Court, the Respondents / Plaintiffs preferred

Regular Civil Appeal No.160 of 2010. During the pendency of appeal, the Petitioner / original Defendant has filed an application for amendment in the written statement so as to bring subsequent changes on record with regard to the *bona-fide* requirement. The learned District Judge has allowed the said application and accordingly, the written statement came to be amended. The Petitioner / Defendant mainly brought following two subsequent events so as to challenge the *bona-fide* requirements of the landlord i.e. the sons of Plaintiff Nos.2 and 3 have purchased different properties at Ahmednagar and they all are residing in the said property together and further, the Plaintiff has closed the suit property and opened a beauty parlor on the front side first floor of the suit property.

3 In view of the said amendment, the Petitioner / Defendant has filed an application Exhibit 41 praying therein to remit the matter to the Trial Court so as to give an opportunity to the Petitioner / Defendant to lead additional evidence pursuant to the amendment made in the written statement. The lower Appellate Court has rejected the said application on two grounds, firstly, the Appellants / original Plaintiffs have accepted the aforesaid transaction of purchasing of the flats and that already issue has been framed in the original suit as to

whether the requirement of the Plaintiffs is *bona-fide*. The learned counsel for Petitioner submits that though the amendment is allowed by the lower Appellate Court in the written statement, it is for the Petitioner / Defendant to substantiate his pleadings by adducing the evidence. The Respondents / Plaintiffs though accepted the said transaction of purchasing the flats by their sons, still then the *bona-fide* requirement, which is the matter in issue before the Trial Court, is required to be substantiated.

4 Application Exhibit 41 appears to have been filed for remand of the matter. It is for the lower Appellate Court to consider whether the matter is fit to be remanded or not only after hearing the appeal finally and the same cannot be done on the basis of the application filed by either of the parties. Even there was no reason for the lower Appellate Court to pass any speaking order on the application Exhibit 41. The Appellate Court after fully hearing the appeal and considering the entire facts and circumstances of the case, must have come to the conclusion on merits that the decree should be reversed or set aside or it was necessary in the interest of justice to remand the case. In absence of recording the finding about necessity of retrial, an order of remand is improper. The Appellate Court may determine the case finally where the evidence upon record is sufficient

to enable the Appellate Court to pronounce judgment. It is also equally necessary to take notice of the change circumstances, which will have the effect of shortening the litigation and of doing the complete justice between the parties and in appropriate case if the notice of subsequent events is taken, may direct recording of additional evidence to show that the need of the landlord is not still subsisting. After considering the arguments of both the parties during the course of final hearing of the appeal, the learned Judge of the lower Appellate Court may pass an appropriate order in terms of the provisions of Order XLI Rule 23-A read with Order XLI Rule 25 of the Code of Civil Procedure.

5 In view of the above, this writ petition is disposed of. The lower Appellate Court after the appeal heard finally, may pass an appropriate order in the appeal. All points kept open.

[V. K. JADHAV, J.]

ndm