

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3618 OF 2017**

Shri Santosh C. Dhuru & Ors. ... Petitioners
Vs.
Sheikhlal Fakir Mahommed
Miya Barmare & Ors. ... Respondents

Mr.Avinash Avhad i/b Amruta Athavale for Petitioners
Mr.C.G. Gavnekar with MR.S.S. Deokar i/b G.S. Hiranandani for
Respondent Nos.3 to 6 & 11

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: APRIL 3, 2017**

P.C. :

1. Rule. By consent of the parties, Rule made returnable forthwith and heard finally.
2. In this Writ Petition, the order passed by the City Civil Court, Mumbai dated 19.12.2016 dismissing the Notice of Motion No.4102 of 2016, is challenged.
3. Respondent No.1 has filed a suit against the other respondents and the present petitioners for putting him in possession as a tenant. In the said suit, the original plaintiff alongwith defendant Nos.1 to 7 filed consent terms and ex-parte order dated 29.9.2016 of accepting the said consent terms was passed. The present petitioners are defendant Nos.8 to 12 who

are the landlords. The learned Judge of the City Civil Court while dismissing the said Notice of Motion praying that the said ex-parte order dated 29.9.2016 is to be set aside, specifically mentioned that no fraud is played by the plaintiff and defendant Nos.1 to 7 while presenting the consent terms so also they have sought permission to withdraw the suit against the defendant Nos.8 to 12. Thus, when the order of consent terms was passed, defendant Nos.8 to 12 were not party to the suit and therefore, the consent terms cannot operate qua defendant Nos.8 to 12. On the first date of the petition, I have passed a detailed order in respect of merits on 27.3.2017. However, the learned Counsel for the petitioners were allowed to serve the notices to the respondents.

4. Today, the learned Counsel for the respondent is also present. The learned counsel for the petitioners has mainly contended that the consent decree should not have been passed in his absence. The plaintiff cannot withdraw the suit against defendant Nos.8 to 12 as they are the original landlords. Defendant No.3 has handed over possession to the plaintiff by accepting Rs.45 lakhs and that is not permissible under the Maharashtra Rent Control Act and it amounted to subletting. He

further submitted that in view of the order dated 16.7.2007, this Court in Notice of Motion No.1301 of 2006, had restrained the defendants from dispossessing or alienating the suit property and so also surrendering tenancy rights or compromising the proceedings. He gave references of eviction suit filed by him bearing No.367/944/1991 and also R.A.D. Suit No.176 of 2000 filed by respondent No.1.

5. The learned Counsel for the petitioners has argued at length and read over the orders of the trial Court. I am of the view that all these submissions are irrelevant as the right of the original defendant Nos.8 to 12 i.e., the petitioners, are in noway affected by the said compromise which took place *inter se* between the plaintiffs and the defendants who are the family members and are the grand-children of the original tenant. The contentions of the petitioners are open in the eviction suit which he has filed.

6. In view of this, there is no merit in this petition. There is no illegality in the order passed by the learned trial Judge. Hence, the Writ Petition is dismissed. Rule is discharged accordingly.

(MRIDULA BHATKAR, J.)