

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7706 OF 2017

Dina Minoo Daver and another ... Petitioners
v/s
Mrs Zainab A. Varawalla and another ... Respondents

Mr Aditya Bapat with Mr Vaibhav Achwal i/b M/s Udwadia and Co.
for Petitioners.
Mr P.M. Rustom Khan for Respondent No.1.

CORAM : B.P COLABAWALLA, J.

DATE : JULY 21, 2017

PC.:

1. This Writ Petition challenges the order dated 29th March 2017 by which the Trial Court struck off one issue viz. Whether the Respondent proves that the Respondent is the tenant in respect of the suit premises. It is this issue that was ordered to be deleted, whilst retaining all other issues.

2. The brief facts of the case show that the Petitioners herein filed Case No.76 of 2013 before the Competent Authority under section 24 of the Maharashtra Rent Control Act 1999. This case was filed

against the Respondents on the basis that they are the licensees of the Petitioners. In Application No.76 of 2013, initially eight issues were framed. One of the issues was whether the Applicants (Petitioners herein) prove that the Respondents are licensees in respect of the suit premises. Thereafter, there was also another issue as to whether the Respondents prove that the Respondents are tenants in respect of the suit premises. It is this issue that has been deleted by the impugned order. I do not think that by deleting this issue any perversity or an error of law apparent on the face of the record has been committed by the Trial Court. At the first instance, the Applicants will have to prove whether the Respondents are licensees in respect of the suit premises. Once this burden is discharged, it would be for the Respondents to show that they are occupying the premises in some other capacity than as licensees. This really would be the defence of the Petitioners herein. This being the case, I do not find that by deletion of issue No.5 viz. "Whether the Respondents prove that the Respondents are tenants in respect of the suit premises" will in any way prejudice the case of the Petitioners before the Competent Authority.

3. In this view of the matter, Writ Petition is dismissed.

However, there shall be no order as to costs.

(B.P. COLABAWALLA, J.)