

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO. 801 OF 2004
IN
WRIT PETITION NO. 2120 OF 2004
WITH
NOTICE OF MOTION NO. 1625 OF 2012
IN
APPEAL NO. 801 OF 2004
WITH
NOTICE OF MOTION NO. 1685 OF 2012
IN
APPEAL NO. 801 OF 2004
WITH
CHAMBER SUMMONS (L) NO. 655 OF 2015
IN
APPEAL NO. 801 OF 2004**

The Municipal Corporation of Brihanmumbai Appellants
and Ors

Vs.

Dalamal Tower Premises and Ors Respondents

Mr. A. Y. Sakhare senior Advocate a/w Mr. S. Pakale, H. C. Pimple for the
Appellant/Petitioner
Mr. Milind Sathe senior Advocate and Mr. Arif Doctor a/w Ms. Sonali Aggarwal i/b
M/s. Junnarkar & Associates for the Respondents
Mr. M. A. Sayed AGP for the State.

**CORAM : NARESH H. PATIL &
Z. A. HAQ, JJ.
DATE : 28th AUGUST 2017.**

P.C.

1 Appeal No. 801 of 2004 was heard finally by Division Bench consisting of
Justice D. K. Deshmukh (as he then was) and Justice R. G. Ketkar. By an order

dated 09/09/2011, both the learned Judges passed separate Judgments. Justice D. K. Deshmukh dismissed the appeal whereas Justice R. G. Ketkar allowed the appeal.

2 Respective Judgments delivered by the learned Judges were signed. The Division Bench thereafter framed an issue to be referred to third Judge by Hon'ble the Chief Justice. The said order passed by the Division Bench referring point of Law reads as under:

“(i) In view of the repeal of the Bombay Rent Act and Enactment of the Maharashtra Rent Control Act, whether the Bombay Municipal Corporation is justified in taking into consideration the actual amount of rent received or receivable by the landlord in relation to the units which are let out, but the lease is exempted from the provisions of the Rent Act for determination of annual letting value with effect from 1st April, 2000?”.

3 The third Judge, Hon'ble Justice Dr. D. Y. Chandrachud by a Judgment and order 11/09/2012 answered the reference. Para 44 of the said Judgment reads as under:

“44 The Reference is answered in the aforesaid terms. The proceedings shall now be placed before the Division Bench in accordance with the assignment of work.”

4 Justice D. K. Deshmukh retired on 30/03/2012. The appeal was placed before a Division Bench consisting of (Coram: V. M. Kanade & R. G. Ketkar, JJ). On 21/10/2015, the said Division Bench passed following order:

“1. Since there was a difference of opinion expressed by D.K. Deshmukh, J. (as he then was) and brother R.G. Ketkar, J., the point which was decided by both the learned Judges was referred to the third learned Judge viz. Dr. D.Y. Chandrachud, J. Thereafter Dr. D.Y. Chandrachud, J. gave an opinion confirming the view taken by R.J. Ketkar, J. The order of reference now has been passed and the view expressed by Dr. D.Y. Chandrachud, J. and R.G. Ketkar, J. is a majority view. The Reference is therefore answered accordingly and disposed of.

2. It appears that R.G. Ketkar, J. had answered all the issues which were raised and argued. However, D.K. Deshmukh, J. (as he then was) had answered only one issue which was referred to the third learned Judge. Since the said issue has now been decided, parties will have to be heard on remaining issues by the Regular Division Bench.

3. At this stage, Mr. Sathe, the learned Senior Counsel appearing on behalf of the Respondents invited our attention to Section 98 of the Civil Procedure Code. He pointed out that since the Reference has been decided, appeal will have to be dismissed on other points. This issue shall also be decided by the Regular Division Bench.

4. Office to place this matter before the Regular Division Bench in which R.G. Ketkar J. is not a party.”

5 The proceedings of the appeal are placed before us. We have heard the learned counsel appearing for the parties.

6 The learned senior counsel Mr. Sathe submits that in view of provisions of Section 98 of Code of Civil Procedure, 1908, the appeal is required to be dismissed. The learned senior counsel appearing for the Municipal Corporation of Brihanmumbai submits that Justice R. G. Ketkar had delivered Judgment on all the issues whereas Justice D. K. Deshmukh dealt with one of the issues and thereafter, the issue was referred to the third Judge and as the Hon'ble third Judge delivered judgment answering the reference and directed that the matter

be placed before the Division Bench, this Division Bench has to hear the appeal, consider the other two remaining issues and dispose the appeal.

7 We have perused the Judgment delivered by both the learned Judges (Shri. D. K. Deshmukh & Shri. R. G. Ketkar, JJ). Original record reflects that both the learned Judges have signed their respective Judgments. We have perused the Judgment delivered by the third Judge.

8 In our view, as both the learned Judges (Shri. D. K. Deshmukh & Shri. R. G. Ketkar, JJ.) had finally disposed of the appeal and signed their respective Judgments, we do not have any seisin over the matter now. Hence, the submissions advanced by the learned counsel appearing for the parties do not call for consideration before us. No further orders can be passed by us in the appeal.

[Z. A. HAQ, J.]

[NARESH H. PATIL, J.]