

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL REVISION APPLICATION NO.30 OF 2017

Prakash Haribhau Kulthe	]	Applicant
Vs.		
Shalini Moreshwar Sangpal	]	
(since deceased)	]	
Ashok Moreshwar Sangpal & Ors.	]	Respondents

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Mr. P.N. Joshi a/w V. Raje i/b Mr. Sagar Kasar, for Applicant.
 Mr. N.R. Bubna with Mr. F.A. Wasif for Respondents.

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CORAM : R.G. KETKAR, J.

DATE : 31ST JULY, 2018.

P.C:

Heard Mr. Joshi, learned Counsel for the applicant and Mr. Bubna, learned Counsel for the respondents at length.

2. By this application under section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C'), the applicant, hereinafter referred to as "defendant" has challenged the judgment and decree dated 12th June, 2006 passed by the learned Civil Judge, Junior Division, Manmad in Regular Civil Suit No.1 of 2002 as also the judgment and decree dated 17th October, 2016 passed by the learned District Judge-2, Malegaon in Civil Appeal No.52 of 2006. By these orders, the Courts below decreed the suit instituted by the respondents, hereinafter referred to as "plaintiffs" only under section 16 (1) (g) of the Maharashtra Rent Control Act, 1999 (for short 'Act').

3. Rule. Mr. Bubna waives service. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the learned Counsel for the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing. The matter was heard at length on 24th July, 2018 and was adjourned till today for passing order.

4. It was submitted on behalf of the defendant that he has filed affidavit dated 7th September, 2016 [Exhibit H colly, pages 151 to 157]. In the affidavit, it is stated that plaintiff No.1, plaintiff No.3 and plaintiff No.5 have expired. During pendency of the appeal, CTS No.1111 where the suit premises is situate is sold by the respondents/plaintiffs on 26th August, 2011 to

[1] Prakash Hirubhau Gavli

[2] Vasant Hirubhau Gavli,

[3] Anil Hirubhau Gavli

and to that effect entries are made in the City Survey record. Along with affidavit, extract of the property card was also produced indicating entry and transaction dated 26th August, 2011. The applicant also filed affidavit dated 21st September, 2016 at Exhibit 25 reiterating the transaction dated 26th August, 2011 and that after selling CTS No.1111, the plaintiffs are also not residing in the suit premises.

5. Mr. Joshi invited my attention to the impugned order of the learned District Judge and in particular paragraphs 19 to 38. In paragraph 19, the learned District Judge was requested to consider subsequent events brought on record by way of affidavits. The learned District Judge referred to the decision of **Ram Nibas Gagar (dead) by Lrs. Vs. Debojyoti Das and others, (2003) 1 Supreme Court Cases 472** and observed that the twin test which is to be passed by the parties to bring in the subsequent events firstly is that the fact which is noticed should be immediately brought to the notice of

the Court and secondly, bringing of subsequent event has to be brought by following the procedure laid down under Order-VI, Rule-17 of the C.P.C.

6. In paragraph 26, the learned District Judge observed that the defendant has filed affidavit and some certified copies of the extract of Index-II register. The contention advanced on behalf of the plaintiffs that the subsequent events are required to be brought on record by amending the written statement and unless written statement is amended, the same cannot be considered is accepted. In paragraph 31, attention of the learned District Judge was invited to the decision of the Apex Court in the case of **Ramesh Kumar Vs. Kesho Ram, AIR 1992 SC 700**, wherein the Apex Court observed that the Court may having regard to the nature of the allegations of fact on which the plea is based permit evidence to be adduced by means of affidavits as envisaged in Rule 1 of Order-XIX of C.P.C. The Court may also treat any affidavit filed in support of the pleadings itself as one under the said provision and call upon the opposite side to traverse it. The learned District Judge, therefore, did not take into account the affidavits filed by the defendant as also the documents filed along with the affidavits on the ground that the defendant did not amend the written statement.

7. As the learned District Judge was not justified in ignoring these affidavits and the documents, it was suggested to Mr. Bubna that the Court is inclined to set aside the order passed by the learned District Judge, thereby, restoring the Civil Appeal to the file of the learned District Judge for deciding it afresh by taking into account the affidavits and the documents filed by the defendant for bringing on record subsequent events. The matter was accordingly adjourned till today at the request of Mr. Bubna.

8. Mr. Bubna, upon taking instructions, states that the impugned order may be set aside and the appeal may be restored to the file of the District Court for deciding it afresh. He assures that within three weeks from today, the respondents will file reply to the affidavit dated 7th September, 2016 as also affidavit dated 21st September, 2016 at Exhibit 25 and serve copy on the other side during this period. The learned District Judge will also permit the parties, if they so desire to adduce evidence in support of their respective case. The parties assure that they will appear before the learned District Judge on 20th August, 2018 and for that purpose, no fresh notice be issued to them.

9. In view thereof, by consent of the parties, the impugned order dated 17th October, 2016 passed by the learned District Judge is set aside. Civil Appeal No.52 of 2006 is restored to the file of the learned District Judge for deciding it afresh. The parties shall appear before the learned District Judge on 20th August, 2018 and for that purpose, no fresh notice be issued to them. The learned District Judge shall fix a suitable date. The plaintiffs shall file reply to the affidavits dated 7th September, 2016 and 21st September, 2016 within three weeks from today and serve copy on the other side during this period.

10. The learned District Judge may permit the parties to adduce evidence in support of their respective case based on subsequent events only. All contentions of the parties in that regard are expressly kept open. While disposing of the appeal, the learned District Judge will take into account the affidavits dated 7th September, 2016 and 21st September, 2016 along with documents and shall decide the appeal in accordance with law. Rule is made absolute in the aforesaid terms with no order as to costs.

11. All the parties including the District Court to act upon an authenticated copy of this order.

[R.G. KETKAR, J.]