

Narayan Govind Mahale and another Vs. Bhogilal M. Shah (decd) through Asha Bhogilal Shah and others	...	Applicants Respondents
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Mr. Akbar Ali Nuruddin Nasikwala for Applicants.
Ms Preeti Gada i/b. Sudhir Shah & Asso. for Respondents.

CORAM : R. G. KETKAR, J.
DATE : MARCH 06, 2018

P.C. :

Heard Mr. Nasikwala, learned Counsel for applicants and Ms Gada, learned Counsel for respondents at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908, applicants have challenged the judgment and order dated 16.12.2011 passed by the learned Judge, Court of Small Causes, Mumbai in R.A.E.Suit No.1296 of 1990 as also the judgment and order dated 15.11.2017 passed by the appellate Bench of the Court of Small Causes, Mumbai in Appeal No.20 of 2012. Rule. Mr. Gada waives service on behalf of respondents. Having regard to the controversy raised in this Application and at the request and by consent of the parties, Rule is made returnable forthwith and the Application is taken up for final hearing.

3. It is not necessary to give background of the case. Suffice it to point out that appellate Court framed point No.1 as regards acquisition of alternate suitable residence under Section 13(1)(l) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Act') and point No.2 as regards non-user of the suit premises without reasonable cause under Section 13(1)(k) of the Act. A perusal of the discussion from paragraphs 13 to 16 shows that the appellate Court did

not deal with the ground of acquisition of alternate suitable residence as also the pleadings and evidence on record as to whether the suit premises were let out for residential purpose or commercial purpose. Similarly, the appellate Court framed point under Section 13(1)(g) of the Act. However, no point as regards hardship under Section 13(2) was even framed. In short, the order of the appellate Court, with respect, is far from satisfactory. During the course of hearing, I indicated to Ms Gada that application requires consideration. Ms Gada, on instructions, states that instead of issuing Rule on the Application, by consent of the parties, impugned order may be set aside and the appeals may be restored to the file of the appellate Court with direction to decide the appeals in a time bound manner.

4. In view thereof, by consent of the parties, impugned order dated 15.11.2017 passed by the appellate Court is set aside. Appeal No.20 of 2012 and Appeal No.21 of 2012 are restored to the file of the appellate Court. In so far as the appellants in Appeal No.20 of 2012 are concerned, the appellate Court will issue notice and thereafter proceed to hear that appeal along with Appeal No.21 of 2012. If the appellants in Appeal No.20 of 2012 do not appear despite service of notice, the appellate Court will proceed with that appeal along with Appeal No.21 of 2012 in accordance with law. As the impugned order is set aside, the appellate Court is requested to decide the appeals within two months from the receipt of the authenticated copy of this order by properly framing the points, including that of hardship, and will proceed thereafter in accordance with law. All contentions of parties on merits are expressly kept open. The appellants will go on regularly depositing the contractual rent as also the compensation as determined while staying the eviction decree passed by the trial Court. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)