

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**CIVIL REVISION APPLICATION NO.641 OF 2009**

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| Shri Satish Ganpati Vhatkar | ...Applicant  |
| Vs.                         |               |
| Shri Dattatray Govind Kadam | ...Respondent |

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Mr.S.M. Railkar for Applicant.  
Mr.A.M. Adagule for Respondent Nos.1A to 1B(iv) and 1F to 1H.

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**Coram : G.S.KULKARNI, J**

**Date : 5<sup>th</sup> FEBRUARY 2018**

**P.C.**

Though this civil revision application is filed in the year 2009 and it was appearing on board from time to time, what transpires today on an objection as raised on behalf of the respondent, though taken belatedly, is an inherent defect on the part of the applicant in pursuing the proceeding as a civil revision application under Section 115 of the Code of Civil Procedure. It is not in dispute that the suit in question was filed as a regular suit praying for a decree of eviction and possession being Regular Civil Suit No.886 of 2003.

2. In paragraph 9 of the plaint, the respondent/plaintiff has clearly averred that the Maharashtra Rent Control Act is not applicable to the suit premises as also plaintiff's case is of a permissible user of the suit premises

as granted to the applicant/defendant. This is not disputed in the written statement. The suit was considered as a regular civil suit and not a suit between the landlord and tenant so as to attract the provisions of Rent Control Laws. The respondent-landlord has also preferred a regular civil appeal (Regular Civil Appeal No.273 of 2006) being aggrieved by the dismissal of the suit.

3. Thus, considering the background of the adjudication by both the Courts below, it appears that the appropriate remedy for the applicant is to file a second appeal as per provisions of Section 100 of the Code of Civil Procedure against the judgment and order dated 19<sup>th</sup> September 2008 passed by the learned District Judge, Kolhapur. The petitioner is agreeable for this course of action.

4. Accordingly, the applicant is permitted to withdraw this petition with liberty to approach this Court for filing a second appeal under the provisions of Section 100 of the Code of Civil Procedure. All contentions of the parties on merits of the dispute are expressly kept open.

5. Needless to observe that the time spent by the applicant for pursuing the proceedings of this application shall endeavour to the benefits of the applicant.

6. At this stage, Mr.Railkar, learned Counsel for the applicant, submits that the respondent has proceeded to execute a decree and that protection be granted to the applicant for the cause which according to him, is made

out in Civil Application No.14 of 2018 and Civil Application No.409 of 2015 filed in the Civil Revision Application.

7. Considering the interest of justice and the above orders which are passed, it would be appropriate and only so as to enable the applicant to approach this Court by filing a second appeal and move the appropriate Court, the execution proceedings, for the said limited purpose, be not proceeded further, for a period of four weeks from today. Ordered accordingly.

8. Civil revision application is accordingly disposed of as withdrawn, however, in the above terms. No costs.

**(G.S.KULKARNI, J)**