

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 134 OF 2018

Jamil Mohammad Hassan Shaikh	...Applicant
<i>Versus</i>	
Ashpak Usman Kazi	...Respondent

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Ms. Rekha Shukla i/b. Yojana Gandhi, Advocate for the Applicant.
Mr. Ajay Basutkar, Advocate for the Respondent.

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CORAM : R. G. KETKAR, J.

DATE : 23rd APRIL, 2018

P.C.

1. Heard Ms. Rekha Shukla, learned counsel for the applicant and Mr. Ajay Basutkar, learned counsel for the respondent, at length.

2. Rule. Mr. Basutkar waives service on behalf of the respondent. Having regard to the narrow controversy raised in this application as also at the request and by consent of the parties, Rule is made returnable forthwith and the application is taken up for final hearing.

3. By this application under Section 115 of Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicant, hereinafter referred to as the 'defendant', has challenged the judgment and decree dated 9.1.2018 passed by the learned District Judge-7, Pune in Regular Civil Appeal No.149/2010. By that order, the learned District Judge allowed

the appeal preferred by the respondent, hereinafter referred to as the 'plaintiff' and quashed and set aside the judgment and decree dated 15.12.2009 passed by the learned Additional Judge, Small Causes Court, Pune in Civil Suit No.370/2006. The learned District Judge decreed the suit under Sections 15 and 16(1)(g) of the Maharashtra Rent Control Act, 1999 (for short, 'Act') and directed the defendant to hand over possession of shop, admeasuring 225 sq. ft., situate on the ground floor of the building having ground+3 floors at Survey No.66, Ganesh Peth, Pune (for short, 'suit premises').

4. Ms. Shukla submitted that the plaintiff had instituted the suit invoking the grounds under Sections 15, 16(1)(c) and 16(1)(g) of the Act. The learned trial Judge dismissed the suit on 15.12.2009. She invited my attention to the submission advanced on behalf of the defendant, which was recorded in paragraphs-8, 28 & 29 of the impugned order. The learned District Judge did not record any finding as to availability of ground floor of a building consisting of ground + 4 floors at Wanwadi, Pune. The learned District Judge did not record any finding as to whether ground floor admeasures 1800 sq. ft. or not and also whether it is in occupation of the tenants or is occupied by the plaintiff. In other words, she submitted that the learned District Judge did not deal with the ground floor of the building at Wanwadi, Pune.

5. Mr. Basutkar tried to support the impugned order. He submitted that the learned trial Judge declined to pass the decree under Section 16(1)(g) of the Act on the ground that the plaintiff has several premises which will satisfy his need. He submitted that the learned District Judge has dealt with the submission advanced by the defendant, as recorded in paragraph-8, in paragraphs-28 & 29 of the impugned order. He, however, could not point out any finding recorded by the learned District Judge in respect of submissions of the defendant recorded in paragraph-8 of the impugned order.

6. After hearing the learned Counsel appearing for the parties, during the course of hearing I indicated that the application requires consideration as the learned District Judge has not dealt with the submission of the defendant recorded in paragraph-8 of the impugned order. After arguing the application for quite some time, Mr. Basutkar, upon taking instructions from the plaintiff who is present in the Court, submits that by consent the impugned order may be set aside and the learned District Judge may be directed to dispose of the appeal in a time bound manner. He has tendered a photo-copy of Aadhaar card of the plaintiff, which is taken on record and marked 'X' for identification.

7. In view thereof, by consent of the parties, Civil Revision Application is disposed of in the following terms :

- [i] Impugned judgment and decree dated 9.1.2018 passed by the learned District Judge-7, Pune in Regular Civil Appeal No.149/2010 is set aside;
- [ii] Regular Civil Appeal No.149/2010 is restored to the file of District Judge, Pune.
- [iii] The parties agree that they will appear before the learned District Judge on 11.6.2018 and for that purpose no fresh notice be issued to them.
- [iv] The learned District Judge is requested to fix a suitable date and thereafter decide the appeal within a period of three months from fixing date of hearing.
- [v] All contentions of the parties on merits are expressly kept open.
- [vi] Rule is made absolute in aforesaid terms with no order as to costs.
- [vii] All concerned parties, including the District Court Pune, to act upon an authenticated copy of this order. Order accordingly.

(R. G. KETKAR, J.)