

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

CIVIL REVISION APPLICATION NO.224 OF 2010

Parasmal Gebiramji Solanki

.. Applicant

Vs.

Janata Sahakari Bank Ltd. & Ors.

.. Respondents

Mr.Satyan N. Vaishnav a/w Ms.Nupur J. Mukherjee i/by M/s. N.N. Vaishnawa & Co. for the applicant.

Mr.Atul Damle, Senior Advocate a/w Mr.Aniruddha Lad i/by BJ Law Offices LLP for the respondent no.1.

CORAM : R.D. DHANUKA, J.

DATE : 23rd October 2018

P.C.:

. By this civil revision application filed under Section 115 of the Code of Civil Procedure, 1908, the applicant has impugned the judgment and order dated 23rd March 2010 passed by the learned Member, Maharashtra State Cooperative Appellate Court, (Mumbai) Bench, Pune thereby allowing the Appeal No.43 of 2009 filed by the respondent no.1 herein and setting aside the award dated 24th February 2009 passed by the learned Judge Cooperative Court No.1, Pune dismissing the suit filed by the respondent no.1.

2. The judgment and order is pronounced on 23rd March 2010. There is no dispute that there is a decree passed by the learned Judge of Small Causes at Bombay on 18th February 2010 in the RAD Suit No.1065 of 2008 filed by the applicant herein against M/s.Ramesh Ranmal Jain HUF declaring the applicant as a tenant of the defendant therein in respect of the suit premises bearing Flat No.301,

admeasuring about 660 sq.ft. situated at 3rd floor of Ameya Apartment, Prathana Samaj Road, Vile Partle (East), Mumbai 400 057. It is not in dispute that the respondent no.1 herein who was the disputant in Dispute No.228 of 1997 before the learned Judge Cooperative Court No.1, Pune was not a party to the said declaratory suit filed by the applicant before the Small Causes Court at Bombay. The learned Member, Maharashtra State Cooperative Appellate Court has passed the impugned order dated 23rd March 2010 after hearing all the parties.

3. The fact remains that the decree passed by the Small Causes Court on 18th February 2010 was not brought to the notice of the the learned Member, Maharashtra State Cooperative Appellate Court when the impugned order was passed on 23rd March 2010.

4. In these circumstances, I pass the following order:-

(i) The directions issued by the the learned Member, Maharashtra State Cooperative Appellate Court in paragraph 2 (IV) of the operative part of the order dated 23rd March 2010 by which the declaration is rendered that the possession of the applicant herein in respect of Flat No.301 was void and unlawful as the same was in violation of sub-section (3) of Section 47 of the Maharashtra Co-operative Societies Act, 1960 and directing immediately to quit and vacate the said Flat No.301 and hand over vacant and peaceful possession thereof to Sheriff of Mumbai are quashed and set aside with a direction to reconsider the said issue after considering the effect of the decree passed by the Judge of Small Causes Court at Bombay on 18th February 2010.

(ii) It is made clear that in so far as the findings rendered by the the learned Member, Maharashtra State Cooperative Appellate Court relating to grant of such declaration in respect of Flat No.301 in paragraph 2(IV) of the operative part of the said order is also quashed and set aside and more particularly paragraphs 20 and 21 of the impugned order of the learned Member, Maharashtra State Cooperative Appellate Court.

(iii) It is made clear that rest of the findings rendered by the learned Member, Maharashtra State Cooperative Appellate Court in the said judgment and order are not quashed and set aside and are confirmed.

(iv) The said Appeal No. 43 of 2009 is remanded back to the learned Member, Maharashtra State Cooperative Appellate Court, (Mumbai) Bench, Pune for this limited purpose.

(v) The applicant herein would be at liberty to produce all the papers and proceedings of RAD Suit No.1065 of 2008 before the learned Member, Maharashtra State Cooperative Appellate Court including the judgment and decree passed by the Judge of the Small Causes Court at Bombay for consideration of the learned Member, Maharashtra State Cooperative Appellate Court.

(vi) Learned Member, Maharashtra State Cooperative Appellate Court shall consider the said issue after hearing both the parties and after considering the effect of the said decree dated 18th February 2010 passed by the Judge of Small Causes Court at Bombay in RAD Suit No. 1065 of 2008 expeditiously.

(vii) Learned Member, Maharashtra State Cooperative Appellate Court shall make an endeavour to dispose of the said issue within six months from the date of communication of this order.

(viii) Civil revision application is disposed of in aforesaid terms. No order as to costs.

R.D. DHANUKA, J.