

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.523/2018
WITH
CIVIL APPLICATION NO.1626/2018

M/s. Sapre & Co.

... Appellant

V/s.

Vidya Sahakari Bank Ltd. & Ors.

... Respondents

Mr. P. S. Dani, Senior Advocate with A. M. Kulkarni with Sarthak
Diwan for the Appellant
Mr. S. C. Wakankar for the Respondent

**CORAM: K.K. TATED &
S. K. SHINDE, JJ.**

DATED : AUGUST 31, 2018

P.C. :

1 Heard. After arguing for some time, both the counsel filed consent minutes of order dated 31.08.2018 duly signed by them. Same is taken on record and marked "X" for identification, which read thus:

MINUTES OF ORDER

1 The present First Appeal is filed impugning the Judgment, decree and order dated 12.12.2017 passed by the Ld. 7th Joint Civil Judge, Senior Division, Pune in Special Civil Suit No. 595 of 2014. The said suit was filed for eviction of the Defendant bank under the provisions of Transfer of property Act. It was bonafide case of the Plaintiff that although the Defendant bank is a tenant, the provisions of the said Act will not apply, since the Defendant Bank is having share capital of more than Rs. 1 Cr.

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2. After the suit was filed before the Ld. Civil Judge, Senior Division, Pune, the defendant appeared in the matter and filed an application below Exhibit-33 under Section 9A of the Civil Procedure Code, 1908 thereby raising an objection to the jurisdiction of court to entertain the suit in view of the provisions of the Maharashtra Rent Control Act, 1999 (hereinafter referred as **the said Act** for short). The said application however was rejected by the Trial Court by holding that the same is vague.

3. The Appellant/Plaintiff now has realized that the Defendant bank, being a Co-operative bank is not covered under the exemption from application of the said Act. On the other hand it is realized that irrespective of value of the paid up share capital, the Co-operative banks are not exempted from the application of the said Act and a suit for eviction against defendant bank would be governed under the said Act. Accordingly the above referred application seeking leave to withdraw the original suit with liberty to file the fresh suit in the Small Cause court at Pune under the provisions of the said Act.

4. Thus the Appellant/Plaintiff accepts that the suit as filed in the Civil court was not maintainable in view of the provisions of the Maharashtra Rent Control Act, 1999.

5. In view of the aforesaid the Plaintiff seeks unconditional withdrawal of the suit, with liberty to file the fresh suit before the Ld. Small Causes Court at Pune in accordance with the appropriate provisions of the said Act. In view of the Application below Exhibit-33 the Defendant also accepts that the suit as filed before the Civil Judge, Senior Division, Pune was not maintainable and also undertakes that if fresh suit is filed before the Ld. Small Causes Court at Pune it will not raise objection that the Provisions of the Maharashtra Rent Control Act, 1999 are not applicable to it.

6. In view of the aforesaid liberty is granted to the Plaintiff/Appellant to withdraw the suit unconditionally, with liberty to file the fresh suit before the Ld. Small Causes Court at Pune in accordance with the relevant provisions of the said Act.

7. *The aforesaid undertaking by the Defendant bank is accepted.*

8. *All the contentions of both the parties on merits are expressly kept open.*

2 The First Appeal as well as the Civil Application stand disposed of in terms of the consent minutes of order.

(S. K. SHINDE, J.)

(K. K. TATED, J.)