

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL REVISION APPLICATION (ST) NO.11797 OF 2018**

Phulmati Munnilal Prajapati] Applicant

Vs.

Bhagwant Krishanji Zope] Respondent

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Mr. D.S. Mhaispurkar i/b Sameer Mangaonkar, for applicant.

Mr. Sanjay A. Ghaisas, for respondent.

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CORAM : R.G. KETKAR, J.

DATE : 2nd MAY, 2018.

P.C.

Heard Mr. Mhaispurkar, learned Counsel for the applicant and Mr. Ghaisas, learned Counsel for the respondent.

2. By this application under section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C'), the applicant, hereinafter referred to as "defendant" has challenged the judgment and order dated 31st January, 2018 passed by District Judge-6, Kalyan in Regular Civil Appeal No.165 of 2009. By that order, the learned District Judge dismissed the appeal preferred by the defendant and confirmed the judgment and decree dated 15th September, 2009 passed by the learned Joint Civil Judge (J.D) Kalyan in Regular Civil Suit No.403 of 1999. The learned trial Judge decreed the suit under section 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Act').

3. Rule. Mr. Ghaisas waives service on behalf of the respondent. Having regard to the narrow controversy raised between the parties and at the request and by consent of the learned Counsel for the parties, rule is made returnable forthwith and the Application is taken up for final hearing.

4. One of the contentions advanced by Mr. Mhaispurkar is that the learned District Judge has not given any reasons in paragraph 13 of the impugned order. He submitted that the District Court being the last fact finding Court has to deal with the facts, evidence on record and arguments advanced by the learned Advocates appearing for the parties. He submitted that judgment of the learned District Judge is far from satisfactory.

5. During the course of hearing of the application, it was indicated to Mr. Ghaisas that in view of the order of the learned District Judge, *prima facie*, the Court is inclined to admit C.R.A. Mr. Ghaisas requested to keep the matter back to explain the matter to the respondent who is present in the Court. Accordingly, the matter was kept back. It was taken in the afternoon session. Mr. Ghaisas submitted that he has explained consequences of the order proposed by this Court. The respondent has understood consequences of setting aside the impugned order and remanding the matter to the District Court. He submitted that by consent of the parties impugned order may be set aside. He has tendered photo copy of Aadhar Card of the respondent which is taken on record marked 'X' for identification.

6. The learned Counsel for the parties submit that the parties will appear before the District Judge on 6th June, 2018 and for that purpose, no fresh notice be issued to them. Learned District Judge may be directed to dispose of the appeal in a time bound manner.

7. In view thereof, by consent of the parties, C.R.A is disposed of in following terms:

- [1] Impugned order dated 31st January, 2018 passed by the learned District Judge-6, Kalyan in Regular Civil Appeal No.165 of 2009 is set aside. Regular Civil Appeal No.165 of 2009 is restored to the file of the District Court. The applicant shall neither create third party interest nor part with possession of the suit premises.
- [2] Parties agree that they will appear before the District Court on 6th June, 2018 and for that purpose, no fresh notice be issued to them.
- [3] The learned District Judge is requested to fix the suitable date for final hearing of the appeal and dispose of the appeal within two months from the date so fixed.
- [4] All contentions of the parties are expressly kept open.
- [5] It is made clear that I have not examined merits of the case.
- [6] The learned District Judge will decide the appeal uninfluenced by the observations made in this order.
- [7] Rule is made absolute accordingly with no order as to costs.

8. All the parties to act upon an authenticated copy of this order.

[R.G. KETKAR, J.]