

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST.) NO.14085 OF 2018

Suresh Atmaram Kolembkar (since deceased through legal heirs)	...Petitioner
vs.	
Hariharprasad Mahadev Nachnolkar	...Respondent

Mr. M.V. Rawool, for the Petitioner
None for the Respondent.

CORAM : M. S. SONAK, J.

DATE : NOVEMBER 19, 2018

P.C.:

. Heard Mr. M.V. Rawool the learned counsel for the
Petitioner.

2. The challenge in this Petition is to the order dated 27th
February, 2018 by which the Appeal Court has rejected the
Petitioner's Application (Exhibit 26) seeking for remand of the
matter under Order 41 Rule 25 of Civil Procedure Code to the trial
Court for decision on issues recast by the Appeal Court in the
Appeal vide order dated 11th September, 2015.

3. Mr. Rawool, the learned counsel for the Petitioner
submits that since there is variance between the issues framed by
the trial Court and the issues framed by the Appeal Court and it is
only proper that the matter be remanded to the trial Court for

decision in the first instance. He submits that if this is not done severe prejudice will occasion the Petitioner, who will not only be deprived of opportunity of leading the evidence in respect of the recast issues but further the Petitioner will also be deprived of an opportunity of Appeal. On this ground, he submits that the impugned order warrants interference.

4. In the present case, the decree of eviction made against the Petitioner, is not restricted only to the ground of *bonafide* requirement. There is other ground of alterations the suit premises also involved. The recast issue mainly pertain to the ground of *bonafide* requirement. The Appeal against the eviction decree on both grounds is still pending.

5. At this stage, it will not be appropriate to interfere with the impugned order. Despite the impugned order, it is possible that the Petitioner succeeds in his pending Appeal. In such situation, there will really be no necessity to challenge the impugned order. In the alternate, if the Petitioner's Appeal fails and the Petitioner seeks to challenge the decision of the Appeal Court, the Petitioner, at that stage, can always be granted liberty to question the impugned order, particularly if the Appeal Court confirms the eviction on the ground of *bonafide* requirement. Any interference at

this stage will unnecessarily prolong the matter without any serious corresponding benefit to either parties.

6. Accordingly, the present Petition is not entertained. However, liberty is granted to the Petitioner to question the impugned order in case, the Petitioner's Appeal is dismissed by the Appeal Court and his eviction is ordered *inter alia* on the ground of *bonafide* requirement.

7. With liberty as aforesaid, the present Petition is dismissed.

8. There shall be no order as to cost.

(M. S. SONAK, J.)