

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 268 OF 2018

Purnima Hotel And Anr.	...Applicants
<i>Versus</i>	
Kakani Kutumb Kalayan Nidhi, Through Vishwastha- Mr. Shriniwas Zumberlal Kakani and Ors.	...Respondents

....

Mr. Jayendra D. Khairnar, Advocate for the Applicants.
Mr. Amey Deshpande, Advocate for Respondent No.2b.
Mr. V.R. Kasle, Advocate for Respondent No.5.

....

WITH

Civil Revision Application (St) NO. 18459 OF 2018

Badrinarayan Ramlal Kakani (since Deceased) Through Lrs Kaushalyabai Badrinarayan Kanani & Ors.	...Applicants
<i>Versus</i>	
Kakani Kutumb Kalayan Nidhi Trust And Ors.	...Respondents

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Mr. Amey Deshpande, Advocate for the Applicants.
Mr. Jayendra D. Khairnar, Advocate for Respondent No.5.
Mr. V.R. Kasle, Advocate for Respondent No.4.

....

WITH

Writ Petition NO. 1946 OF 2018

Shreyash Shriniwas Kakani	...Petitioner
<i>Versus</i>	
Purnima Hotel, And Ors.	...Respondents

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Mr. V.R. Kasle, Advocate for the Petitioner.
Mr. Jayendra D. Khairnar, Advocate for Respondent No.1.
Mr. Amey Deshpande, Advocate for Respondent No.4B.

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CORAM : R. G. KETKAR, J.

DATE : 16th JULY, 2018

P.C.

1. Heard Mr.Jayendra D. Khairnar, learned Counsel for the applicants, Mr.Amey Deshpande, learned Counsel for Respondent No.2b and Mr.V.R. Kasle, learned Counsel for Respondent No.5 – Shreyas Shriniwas Kakani in above C.R.A. At the request of Mr. Deshpande, Civil Revision Application (St.) No.18459/2018, which is not on board, is taken up for admission along with above C.R.A. At the request of Mr.Kasale, Writ Petition No.1946/2018, which is not on board, is also taken up for admission along with above C.R.A.

2. C.R.A. No.268/2018 takes exception to the judgment and decree dated 31.1.2008 passed by the learned 4th Jt. Civil Judge, Junior Division, Malegaon, District–Nashik in Regular Civil Suit No.91/2005 as also the judgment and decree dated 18.4.2018 passed by the learned District Judge-1, Malegaon, District–Nashik in Civil Appeal No.19/2008. By these orders, the Courts below decreed the suit instituted by Kakani Kutumb Kalayan Nidhi Trust, through its Trustee Dr.Shriniwas Zumberlal Kakani (respondent No.1 herein) *inter alia* on the ground that defendants No.1 & 2 are defaulters and that they have unlawfully sublet the suit premises to defendant No.3. In other words, the Courts

below have decreed the suit under Sections 15 and 16(1)(e) of the Maharashtra Rent Control Act, 1999 (for short, 'Act'). The learned trial Judge decreed the suit mainly on the ground that though defendants No.1 & 2 were duly served they did not file written statement. No-WS order was passed against them. Insofar as defendants No.4 to 6 are concerned, though the suit summons was served on them, they did not appear and the suit was ordered to proceed *ex parte* against them. Defendants NO.1 & 2 also did not cross-examine the plaintiff's witness and No-Cross order was passed against them. As defendants No.1 & 2 did not file written statement, they were also not permitted to lead evidence in support of their case.

3. C.R.A.(St.) No.18459/2018 takes exception to the judgment and decree dated 31.1.2008 passed by the learned 4th Jt. Civil Judge, Junior Division, Malegaon, District-Nashik in Regular Civil Suit No.91/2005 as also the judgment and decree dated 18.4.2018 passed by the learned District Judge-1, Malegaon, District-Nashik in Civil Appeal No.17/2008.

4. W.P. No.1946/2018 takes exception to the order dated 16.8.2017 passed by the learned District Judge-2, Malegaon, District-Nashik below Exhibits-120 and 126 in Civil Appeal No.19/2008. By that

order, the learned District Judge allowed the applications and permitted the appellant before him to produce the documents.

5. The matter was heard at length on 11.7.2018 and was kept today for passing orders. During the course of hearing, a suggestion was given to Mr. Khairnar that as defendants No.1 & 2 did not file written statement, did not cross-examine the plaintiff's witnesses as also could not lead evidence, subject to their handing over possession of the suit premises to the first respondent herein, the Court will consider setting aside the orders passed by the Courts below thereby restoring the suit to the file of the trial Court. The Court will also consider permitting defendants No.1 & 2 to file written statement and permitting the parties to adduce fresh evidence.

6. Mr. Khairnar states that Vijay Uday Eiatal, son of applicant No.2 is present in the Court today. He has tendered a photo-copy of his Aadhaar Card, which is taken on record and marked 'X' for identification. Upon taking instructions from him, Mr. Khairnar submits that the applicants are ready and willing to hand over possession of suit premises to respondent No.5 herein within two weeks from today. Upon handing over possession to respondent No.5, respondent No.5 shall neither create third party interest nor part with the possession and will

abide by the outcome of the suit subject to its right to challenge the order of the trial Court, if it goes adverse.

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

- [i] The judgment and decree dated 31.1.2008 passed by the learned 4th Jt. Civil Judge, Junior Division, Malegaon, District–Nashik in Regular Civil Suit No.91/2005 as also the judgment and decree dated 18.4.2018 passed by the learned District Judge-1, Malegaon, District – Nashik in Civil Appeal No.19/2008, are set aside. Suit is restored to the file of the trial Court for deciding it *denovo*.
- [ii] Defendants No.1 & 2 shall file written statement within four weeks from today.
- [iii] The parties are at liberty to adduce fresh evidence in the trial Court.
- [iv] The applicants shall hand over possession of suit premises to respondent No.5 herein within two weeks from today.
- [v] Upon receipt of the possession, respondent No.5 will neither create third party interest nor part with the possession and shall abide by the outcome of the suit subject to its right to challenge the order in case the suit is decided against the fifth respondent.

- [vi] Liberty is reserved to respondent No.2b Jagdish Badrinarayan Kakani to take out application before the trial Court or to adopt appropriate proceedings for recovery of possession of the suit premises from respondent No.5.
- [vii] All contentions of the parties are expressly kept open.
- [viii] Liberty is reserved to defendants No.1 & 2 to apply for expeditious disposal of the trial. If such application is made, the learned trial Judge will pass appropriate orders.
- [ix] Rule is made absolute in aforesaid terms with no order as to costs.
- [x] In view of the order passed in above C.R.A., C.R.A. (St.) No.18459/2018 does not survive and the same is disposed of.
- [xi] In view of setting aside the orders passed by the Courts below, W.P. No.1946/2018 does not survive and the same is also disposed of.
- [xii] Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)

Pradipkumar
Prakashrao
Deshmane
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by Pradipkumar
Prakashrao
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Date: 2018.07.19
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