

Mr. Sameer R. Bhalekar for Petitioners.
Mr. Vishal Kanade a/w. Mr. Himanshu Pradhan i/b. M/s. Crawford Bayley
& Co. for Respondents.

P.C. :

2. Rule. Mr. Kanade waives service for respondents. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

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Court was directed to record findings. The Appellate Court set aside the judgment and decree dated 14.08.2015 passed by the learned trial Judge in R.A.E. Suit No.904/1417 of 2006.

4. Mr. Kanade, upon taking instructions, states that plaintiffs are not pressing amendment proposed in paragraphs 14(a) to 14(f) as per Schedule "A" as these grounds are not prior to passing of eviction decree on 14.08.2015. He submits that plaintiffs will press amendment from paragraphs 14(g) onwards to 14(p), which are the events that took place post passing of eviction decree on 14.08.2015. Statements made by Mr. Kanade, on instructions, are accepted.

5. As noted earlier, after allowing the application exhibit-13, the Appellate Court has set aside the decree. In my opinion, the proper course that Appellate Court should have followed was to exercise power under Order XLI, Rule 25 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') by raising particular issue and permitting parties to adduce evidence. The Appellate Court was not justified in setting aside the decree passed by the learned trial Judge. Hence, Petition is disposed of in the following terms:

- a. Plaintiffs shall carry out amendment in the plaint as per paragraph 14(g) to (p) of Schedule A of application exhibit-13. In other words, plaintiffs shall not amend the plaint so as to incorporate paragraphs 14(a) to 14(f) of Schedule A of application exhibit-13;
- b. Defendants shall file additional written statement to the amended plaint within four weeks from service of the amended plaint;
- c. The learned trial Judge will frame the issue / issues on the ground of nuisance and annoyance as contemplated by Section

16(1)(c) of the Maharashtra Rent Control Act, 1999 including ground of limitation and permit the parties to adduce evidence;

d. The learned trial Judge will record the evidence as also finding after hearing both sides and transmit the record to the Appellate Court. Let that exercise be done within 3 months after appearance of the parties;

e. Clause 4 of the operative part of the impugned order dated 15.06.2018 is set aside and is substituted in the aforesaid terms:

“Parties shall appear before the trial Court on 23.07.2018 and for that purpose no fresh notice be issued to them;”

f. Rule is partly made absolute in the aforesaid terms with no order as to costs;

6. It is, however, expressly made clear that where a decree is appealed from by the petitioners, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

7. All the parties including the trial Court to act upon the authenticated copy of this Order.

(R. G. KETKAR, J.)

Minal Parab

Minal Sandip
Parab

Digitally signed by Minal Sandip
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Date: 2018.07.18 04:07:04 +0400