

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 656 OF 2016

Chandran Mani Kruppattadan

...Applicant

Versus

Heris and Legal Representatives of deceased
Bhiku Wd/o Nusserwanji Hiranmanek
and Ors

...Respondents

....

Mr. R.A. Thorat, Senior Advocate a/w. Pradeep J. Thorat, Advocate for the Applicant.

Mr. Dakshah Vyas i/b. Daniel, Advocate for Respondent No.3.

....

CORAM : R. G. KETKAR, J.

DATE : 24th APRIL, 2018

P.C.

1. Heard Mr.R.A. Thorat, learned Senior Counsel for the applicant and Mr.Dakshah Vyas, learned counsel for respondent No.3, at length.

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 No.2', has challenged the judgment and decree dated 03.09.2007 passed by the learned Judge, Court Room No.7 of the Court of Small Causes at Mumbai in R.A.E. Suit No.3127 of 1988 as also the judgment and decree dated 02.09.2016 passed by the Appellate Bench of the Small Causes Court at Mumbai in A-1 Appeal

No.647 of 2007. By these orders, the Courts below decreed the Suit instituted by respondents No.2 and 3 on the ground of non-user as contemplated by Section 13(1)(k) of the Bombay Rents, Hotel and lodging House Rates Control Act, 1947 (for short 'Bombay Rent Act') and passed eviction order in respect of flat No.10 in Yusuf Manzil situate at 314-314 part, Victoria Garden Road, Byculla Bridge, Byculla, Bombay 400 008 (for short 'suit premises').

3. Rule. Mr.Vyas waives service on behalf of the respondent. Having regard to the narrow controversy raised in this C.R.A. as also at the request and by consent of the parties, Rule is made returnable forthwith and C.R.A. is taken up for final hearing.

4. The matter was heard at length on 23.4.2018 and at the request of Mr. Vyas was kept today under the caption 'for directions' so as to enable him to take instructions as to whether respondent No.3 is willing to set aside the impugned orders by consent. Mr. Vyas, on instructions, states that by consent of respondent No.3, the impugned orders may be set aside. He further submits that the time to carry out amendment in pursuance of the order dated 21.1.2004 passed by the Appellate Bench of the Small Cause Court in Appeal No.466/2001 may be extended by eight weeks from today.

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

- [i] the judgment and decree dated 03.09.2007 passed by the learned Judge, Court Room No.7 of the Court of Small Causes at Mumbai in R.A.E. Suit No.3127 of 1988 as also the judgment and decree dated 02.09.2016 passed by the Appellate Bench of the Small Causes Court at Mumbai in A-1 Appeal No.647 of 2007 are set aside.
- [ii] R.A.E. Suit No.3127/1988 is restored before the trial Court.
- [iii] Respondent No.3/plaintiff shall carry out the amendment by impleading the legal representatives of deceased Bhiku within eight weeks from today.
- [iv] After the amendment is carried out, the trial Court will issue notices to the legal representatives of deceased defendant No.1 Bhiku and permit them to file written statement.
- [v] The learned trial Judge will permit the parties to lead additional evidence as also permit the L.Rs. of defendant No.1 to lead evidence in support of their case, if they are so advised.
- [vi] All contentions of the parties, on merits are expressly kept open.
- [vii] After the service is effected on the L.Rs. of defendant No.1, the learned trial Judge is requested to dispose of the suit within one year from completion of the pleadings.
- [viii] Rule is made absolute in aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)