

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CIVIL REVISION APPLICATION NO. 75/2018

(M/S SAREE ENTERPRISES VERSUS NIRDOSHKUMAR RADHESHYAM CHOURASIA)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri N.B. Kalwaghe, counsel for the applicant.
Shri S.J. Joshi, counsel for the non-applicant.

CORAM : A.S. CHANDURKAR, J.

DATE : JULY 24, 2018.

The applicant is the defendant in the suit for ejectment and possession filed by the non-applicant herein. It is the case of the non-applicant that he is the owner of the building known as Chourasia building and he has let out the suit premises to the present applicants at monthly rent of Rs.875/-. As the non-applicant had a bona fide need of the suit premises, suit for eviction under provisions of Section 16(1)(g) of the Maharashtra Rent Control Act, 1999 came to be filed.

Written statement was filed opposing the aforesaid suit. It was pleaded in paragraph 23-A that as the suit property was situated in a slum area, the suit was not maintainable without obtaining prior permission of the competent authority under Section 22(1) of the Maharashtra Slum Area (Improvement, Clearance and Re-Development) Act, 1971 (for short, 'the said Act').

The trial Court after considering the evidence on record dismissed the suit. It held that though the plaintiff had proved his bona fide need, the suit was not maintainable for want of prior permission of the competent authority under Section 22 of the said Act. The original plaintiff therefore filed an appeal. The appellate

Court by the impugned order framed a point as to whether the plaintiff had proved that the building where the suit property was situated was erected after obtaining permission of the relevant authority. The appellate Court directed the trial Court to frame said point and after permitting the parties to lead evidence directed the trial Court to return its findings on the same. Being aggrieved, the original defendants have filed the present civil revision application.

It is submitted by the learned counsel for the applicant that the issue as framed did not arise for consideration especially in view of the fact that the notification dated 30.11.1978 was issued under provisions of Section 4(1)(a) of the said Act. By said notification, the entire area relating to Khapri Mohalla was declared as a slum area. It is submitted that there was no occasion to refer to the explanation as given to Section 4(1)(b) of the said Act as the said explanation pertains only to buildings as contemplated by Section 4(1)(b) of the said Act. As the notification was with regard to the entire area and not the building, that explanation was not attracted. It is therefore submitted that reference of that issue to the trial Court was unwarranted especially when it was admitted that the suit property was located within the four boundaries of the area declared as slum area. The learned counsel referred to the decision in **1996 (5) BCR 644** (*Ramniklalbhai V. Shah & Others Versus Maharashtra Slum Areas (Improvement, Clearance & Re-Development) Tribunal, Bombay & Others*) in support of his submissions.

The learned counsel for the non-applicant supported the impugned order. It was submitted that as the building in question was constructed after obtaining the due permission, it

could not be said to fall within the slum area and it was excluded as per the explanation to the provisions of Section 4(1)(b) of the said Act. The learned counsel referred to the Building Plan and the Sanctioned Map and submitted that the appellate Court rightly directed the trial Court to record a finding on the said issue.

I have heard the learned counsel for the parties and have perused the impugned order. According to the applicant, as per notification dated 30.11.1978, the entire area where the building in question is situated has been declared as a slum area. Therefore, that notification has been issued under Section 4(1)(a) of the said Act. On the other hand according to the plaintiff, since the building in question has been constructed after obtaining sanction of the planning authority, it is a building which is covered by explanation to Section 4(1)(b) of the said Act. Therefore, the provisions of Section 22 of the said Act would not be attracted.

At this stage, the appellate Court has framed the point as to whether the building where the suit property is situated was constructed after obtaining prior permission of the relevant authority. It is not necessary at this stage to adjudicate as to whether the building in question is entitled to be exempted by virtue of Section 4(1)(b) of the said Act or whether by virtue of the notification in question, as the entire area is declared as a slum area, such exemption cannot be claimed. This aspect can be considered by the appellate Court after the findings as directed to be recorded are received back. For said purpose, the parties are at liberty to amend their pleadings and raise appropriate claim/defence in that regard. While it is open for the plaintiff to rely upon provisions of Section 4(1)(b) of the said Act, it is open for

the defendant to contend that the notification in question was exclusively under Section 4(1)(a) of the said Act, the explanation to Section 4(1)(b) of the Act is not attracted. By clarifying that the observations made by the appellate Court while passing the impugned order would not come in the way of parties when the appeal is finally decided and that the appellate Court shall decide said aspect without being influenced by the impugned order, at this stage, I do not find any reason to interfere with the impugned order.

With the aforesaid observations and keeping points with regard to applicability of Section 4(1) of the said Act open, the civil revision application is disposed of.

JUDGE

APTE