

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

908 CIVIL APPLICATION NO.704 OF 2012
IN WP/1639/1992
PADMAKAR JAGANNATH MAID DECEASED TH LRS
VERSUS RADHAKISHAN SHANKARRAO LABADE.DECEASED TH LRS

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Advocate for Applicants : Shri Bedre V.S.
Advocate for Respondent 2 : Shri Shaikh Mobin h/f Shri Dhorde V.R.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: April 05, 2019

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PER COURT :-

1. By this Civil Application, the original defendant / tenant, now deceased, appearing through L.Rs., prays for setting aside the order dated 7.3.2011, passed by this Court (Coram : S.S.Shinde, J.), by which, the petition was dismissed for non-prosecution and the interim relief was vacated.

2. Learned Advocate for the applicants submits that Writ Petition No.1639 of 1992 was on Board for final hearing. The applicants were protected by the interim order of this Court. He concedes that there are concurrent findings against the petitioners, by which, eviction has been ordered and the property is directed to be handed over to the landlord. It is submitted that the petition can be heard on its merits.

3. Learned Advocate for the landlord, appearing through L.Rs., submits that the original landlord and the original tenants have already passed away. The L.Rs. of the landlord are senior citizens. A property

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owned by the landlord is not being returned by the tenant, when the litigation commenced on 7.4.1983 and the first judgment of the trial Court, directing eviction, was delivered on 30.10.1986.

4. It is further submitted that in a similar Writ Petition, involving the same landlord but a different tenant, the tenant has already handed over the possession to the landlord, *suo moto*.

5. I find that though the Writ Petition was taken up for final hearing after 19 years and was dismissed on 7.3.2011, the Civil Application was filed on 15.3.2011 and without any interim protection, the Civil Application was pending for almost 8 years. This Court did not grant any protection to the tenant, when notice was issued on 3.2.2.2012. The tenant has apparently derived an undue advantage by keeping this application pending for eight years.

6. Considering the peculiar facts of this case and keeping in view that the litigation had commenced on 7.4.1983, which is 36 years ago, I do not find this to be a fit case for granting any relief.

7. The Civil Application is therefore, rejected.

(RAVINDRA V. GHUGE, J.)

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