

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL APPLICATION NO.429 OF 2012
WITH
CIVIL APPLICATION NO.430 OF 2012
IN
WRIT PETITION NO.5888 OF 1998

Ramchandra Shivram Gadekar] Applicant
Vs.
Sudhatai Bhagwandas Sawant and others.] Respondents

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Mr. V.S. Gokhale, for the Applicant in Civil Applications and Respondent in Writ Petition.

Mr. Ramesh Soni, for the Respondents in Civil Applications and Petitioners in Writ Petition.

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CORAM : R.G. KETKAR, J.

DATE : 18th JANUARY, 2019.

P.C:

Heard Mr. Gokhale, learned Counsel for the applicant and Mr. Soni, learned Counsel for the respondents in both the applications at length.

2. Civil Application No.429 of 2012 is taken out for amending the plaint instituted by the applicant before learned Civil Judge, Junior Division, Wai by inserting para 9 (A) as per annexure "C" annexed to the Civil Application. Civil Application No.430 of 2012 is taken out by the applicant/plaintiff for taking into consideration the subsequent developments while deciding this Writ Petition.

3. The applicant/plaintiff had instituted the said suit for recovery of possession of the premises situate on the first floor of CTS No.81 of Final Plot No.157 admeasuring 200 square feet within the municipal limits of Pachagani, Wai (for short 'suit premises') invoking ground under section 13 (1) (g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Act'). By order dated 4th January, 1993, the learned trial Judge partly decreed the suit with proportionate costs and held that the plaintiff is entitled to recover the amount of Rs.583.20 paise from the defendants. The plaintiff's claim for vacant possession of the suit premises was dismissed. Aggrieved by that decision, the plaintiff preferred Regular Civil Appeal No.100 of 1993. By order dated 31st August, 1998, the learned III Additional District Judge, Satara allowed the appeal and set aside the trial Court's decree in so far as possession of the suit premises is concerned. The learned District Judge decreed the suit for recovery of possession and directed the defendants to deliver possession of the suit premises to the plaintiff within 3 months from the date of the order. Aggrieved by this decision, the defendants have instituted Writ Petition No.5888 of 1998 in this Court. On 12th March, 1999, the Petition was admitted by issuing Rule and stay was granted subject to the conditions.

4. During pendency of the Petition, the applicant/plaintiff has taken out these Civil Applications for amending the plaint by inserting paragraph 9(A) in the plaint. Both these applications were heard on 28th March, 2012 when this Court directed that Civil Applications be heard along with Writ Petition.

5. In the suit, the plaintiff contended that he runs Medical Store at Pachagani and the suit premises is required for expansion of his business. The plaintiff claims possession by invoking ground under section 13 (1) (g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short

'Act'). In Civil Application No.430 of 2012, the plaintiff has contended that due to his old age i.e 80 years as on today, it is his desire that one of his daughters Shilpa should stay with him along with her family i.e her husband Shonan and son Hemang. The plaintiff's daughter Shilpa has successfully completed Diploma in Pharmacy from Bharati Vidyapeeth Pune conducted by Government of Maharashtra through Maharashtra State Board of Technical Education in the year 1996. She is willing to assist the plaintiff in running Medical Store. She is qualified to run medical store. The applicant has claimed possession of the suit premises for expansion of his existing business of medical store.

6. Mr. Gokhale submitted that subsequent developments pending the Petition can be taken into consideration even while deciding the Writ Petition. On the other hand, Mr. Soni submitted that the subsequent developments pleaded raise several disputable questions of facts and the same cannot be effectively decided in this Petition. The parties will have to adduce evidence in support of their Contentions.

7. I find merit in the submission of Mr. Soni that proposed amendment raises disputed questions of facts and the parties will have to adduce evidence in support of their contentions. It is, therefore, necessary to permit the petitioner to amend the plaint and insert paragraph 9(A). The defendants shall file additional written statement to the amended plaint. In view thereof, I deem it appropriate to exercise powers under Order-XLI, Rule-25 of the Code of Civil Procedure, 1908. The trial Court will frame following issues;

- [1] bona fide requirement of plaintiff's daughter
Shilpa as pleaded in paragraph 9(A)
- [2] issue of comparative hardship.

The parties shall adduce evidence on these issues. The learned trial Judge will record the finding on these issues and transmit the record to the District Court. The District Court will record finding on these issues and transmit the entire record to this Court. In order to enable the trial Court to record finding, record and proceeding be transmitted to the trial Court forthwith. In view thereof, following order is passed;

- [1] The Office will transmit the Record and Proceeding to the trial Court forthwith. After Record and Proceeding transmitted, the trial Court will issue notice to the parties.
- [2] The plaintiff shall carry out amendment by inserting paragraph 9(A) in the plaint and serve copy on the defendants.
- [3] The defendants shall file written statement to the amended plaint within 2 weeks from receipt of copy of the amended plaint.
- [4] The learned trial Judge is requested to complete the exercise within 3 months from the date of appearance of the parties and transmit the record to the District Court. The District Judge will record the findings and transmit the same along with original record to this Court within 6 months from today.

8. Civil Application No.429 of 2012 and Civil Application No.430 of 2012 are accordingly disposed of.

9. **List the Petition for further hearing on 25th July, 2019.**

[R.G. KETKAR, J.]