

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 201 OF 2019

Shri. Shivraj Vilas Powar

...Applicant

Versus

Shrish Prabhakar Vankudre
and another

...Respondents

....

Mr. Chetan G. Patil, Advocate for the Applicant.

Ms. Sheetal U. Malvankar, Advocate for the Respondents.

....

CORAM : R. G. KETKAR, J.

DATE : 11th JULY, 2019

P.C.

1. Heard Mr. Chetan G. Patil, learned counsel for the applicant and Ms. Sheetal U. Malvankar, learned counsel for the respondents, at length.

2. By this application under Section 115 of Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicant, hereinafter referred to as the 'defendant', has challenged the judgment and decree dated 26.10.2010 passed by the learned 3rd Jt. Civil Judge, Junior Division, Kolhapur in Regular Civil Suit No.753/2007 as also the judgment and decree dated 1.12.2018 passed by the learned District Judge-1, Kolhapur in Regular Civil Appeal No.303/2010.

3. Rule. Ms. Malvankar waives service. Having regard to the

narrow controversy raised in 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. The relevant and material facts giving rise to filing of the present application, briefly stated, are as under.

4. The respondents, hereinafter referred to as the 'plaintiffs', have instituted suit for recovery of possession of two rooms, admeasuring 14 ft. x 7 ft. and 9 ft. x 7 ft., in all admeasuring 161 sq. ft., out of total area admeasuring 53.5 sq. mtrs., situate in City Survey No.155/1, Ward 'C' of Kolhapur *inter alia* on the ground of arrears of rent and reasonable and bonafide requirement [sections 15 and 16(1)(g) of the Maharashtra Rent Control Act, 1999 (for short, 'Act')]. Both the Courts below decreed the suit only under Section 16(1)(g) of the Act.

5. In support of this application, Mr. Patil has taken me through (1) paragraph-5 of the plaint where the plaintiffs have pleaded requirement, (2) cross-examination of plaintiff No.1 and in particular paragraphs-12 and 13 thereof, as also (3) the findings recorded by the learned District Judge in paragraphs-14 and 15. He submitted that the learned District Judge has not dealt with the evidence adduced by the plaintiffs and in particular cross-examination of the plaintiffs' witness. In short, he submitted that the first appellate Court being the last fact

finding Court ought to have considered the pleadings and evidence adduced by the parties. He submitted that as the District Court has not considered the evidence of the plaintiffs witness and still proceeded to hold that the plaintiffs have established the requirement, the application requires consideration.

6. On the other hand, Ms. Malvankar supported the impugned orders. She has also taken me through the paragraphs-14 and 15 of the District Court order and submitted that no case is made out for invocation of powers under Section 115 of C.P.C.

7. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. After perusing paragraphs-14 and 15 of the District Court judgment, I am satisfied that the learned District Judge has not considered the evidence adduced by the parties. The first appellate Court, being the last fact finding Court, is expected to deal with the pleadings and evidence adduced by the parties. In short, the judgment of the District Court is far from satisfactory.

8. During the course of hearing of this application, I indicated to Ms. Malvankar that as the order of the District Court is not satisfactory, the application requires consideration. I made enquiries from Ms. Malvankar as to whether the plaintiffs are ready and willing

for setting aside the order passed by the District Court and remitting the matter to the District Court for deciding the appeal afresh. She submitted that respondent No.1 – Shirish Prabhakar Vankudre is present in the Court today and that he has authority to make statement on behalf of the second respondent. She has tendered a photo-copy of his Aadhaar Card, which is taken on record and marked 'X' for identification. Upon taking instructions, Ms. Malvankar submitted that by consent the order passed by the learned District Judge may be set aside. The appeal may be restored to its original position. The defendant may be directed to deposit the compensation as ordered by the District Court @ Rs.5,000/- per month during pendency of the appeal in the District Court. She further submitted that the learned District Judge may be directed to dispose of the appeal in a time bound manner.

9. Mr. Patil, upon taking instructions from Mr. Ravi Shiralkar instructing Advocate of lower Court, states that in pursuance of the order dated 4.4.2019, the defendant has deposited arrears of rent in the District Court. He further states that in case the defendant has not deposited the compensation @ Rs.5,000/- per month as ordered by the District Court while granting stay to the eviction decree, on or before 29.7.2019 he will deposit the arrears of the compensation @ Rs.5,000/- per month in the District Court under intimation in writing to the

learned counsel for the plaintiffs. The learned counsel for the parties submit that they will appear before the District Court on 29.7.2019 and for that purpose no fresh notice be issued to them.

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

- i. The judgment and decree dated 1.12.2018 passed by the learned District Judge-1, Kolhapur in Regular Civil Appeal No.303/2010 is set aside.
- ii. Regular Civil Appeal No.303/2010 is restored to its original position along with interim order.
- iii. The defendant will deposit the arrears of compensation @ Rs.5,000/- per month in the District Court on or before 29.7.2019, in case it is not already deposited, under intimation in writing to the Advocate for the plaintiffs in the District Court.
- iv. The parties shall appear before the learned District Judge on 29.7.2019 and for that purpose no fresh notice be issued to them.
- v. The learned District Judge will fix a suitable date and thereafter will dispose of the appeal as expeditiously as

possible and in any case within three months from fixing suitable date of hearing. The learned District Judge will consider the pleadings and evidence adduced by the parties and also will record reasons. In view of the decision of Apex Court in the case of *Banarsi vs. Ram Phal*, (2003) 9 SCC 606, the plaintiffs are entitled to support the decree and attack the findings recorded by the learned trial Judge under Section 15 of the Act without filing cross-appeal / cross-objections. The learned District Judge will also deal with the ground of eviction under Section 15 of the Act.

- vi. All contentions of the parties on merits are expressly kept open.
- vii. Rule is made absolute in aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)