

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 148 OF 2017

Shri. Shridhar Tukaram Khade,
since deceased through L.Rs.

1. Ravindra S. Khade & Ors.

...Applicants

Versus

M/s. Ghatage Patil Transport Limited
and another

...Respondents

....

Mr. T.S. Ingale, Advocate for the Applicants.

Mr. Amit B. Borkar, Advocate for Respondent No.1.

....

CORAM : R. G. KETKAR, J.

DATE : 10th APRIL, 2019

ORAL JUDGMENT :

1. Heard Mr.T.S. Ingale, learned counsel for the applicants and Mr.Amit Borkar, learned counsel for respondent No.1, at length.

2. By this application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicant Shridhar T. Khade (since deceased), hereinafter referred to as the 'plaintiff', has challenged the judgment and decree dated 29.1.2016 passed by the learned District Judge-5, Sangli in Regular Civil Appeal No.159/2010. By that order, the learned District Judge allowed the appeal preferred by respondent No.1, hereinafter referred to as the 'defendant', and set aside the judgment and decree dated 22.4.2010 passed by the learned 2nd Jt. Civil Judge, Junior Division, Sangli in Regular Civil Suit No.502/1999. The

learned District Judge remitted the matter to the trial Court for recasting issues and permitted the parties to adduce additional evidence and advance additional arguments and dispose of the suit afresh.

3. Mr. Ingale submitted that the plaintiff had instituted suit on 16.9.1999 invoking the grounds under Sections 12 and 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, 'Bombay Rent Act'). By judgment and decree dated 22.4.2010, the learned trial Judge decreed the suit. Aggrieved by that decision, the defendant preferred appeal. By the impugned order the learned District Judge allowed the appeal as indicated above. Mr. Ingale submitted that the learned District Judge framed point No.1, which is to the following effect :

	Points	Findings
1.	Whether the suit is barred by provision of Section 3(1)(b) of the Maharashtra Rent Control Act, 1999 (Amendment) with effect from 19 th May, 2000 ?	In the affirmative.

4. Mr. Ingale submitted that in paragraph-13, the learned District Judge reproduced Section 2(2) of the Maharashtra Rent Control Act, 1999 (for short, 'Maharashtra Rent Act'). In paragraph-14, the learned District Judge held that the suits filed under the Bombay Rent Act and which are pending at the time of commencement of the Maharashtra Rent Act would be continued as per Section 2(2) of the

Maharashtra Rent Act. He submitted that the learned District Judge committed error in not considering Section 58(2)(a) of the Maharashtra Rent Act. He further submitted that the Maharashtra Rent Act is not retrospective in operation. In support of this submission, he relied upon the decision of this Court in **Shrikrishna Jugalkishore Goenka Vs. Govind Trimbak Vaidya, 2009 (1) Mh.L.J. 666**

5. On the other hand, Mr. Borkar supported the impugned order. He invited my attention to paragraph-10 of the impugned order. In paragraph-10, the learned District Judge referred to the paragraph-4(a) of the plaint where the plaintiff pleaded that the share capital of the defendant is more than Rs.1 Crore. Even the witness examined by the plaintiff deposed that the defendant company has share capital of more than Rs.1 Crore. The learned District Judge observed that the defendant is a Public Limited Company having share capital of more than Rs.1 Crore.

6. In paragraph-11, the learned District Judge referred to the arguments advanced by the plaintiff based on Section 3(1)(b) of the Maharashtra Rent Act. In short, Mr. Borkar submitted that it was the plaintiff who advanced submissions based upon Maharashtra Rent Act. It is in that view of the matter, the learned District Judge reproduced Section 2(2) of the Maharashtra Rent Act in paragraph-13 and held in paragraph-14 that the suit will be governed by the provisions of the

Maharashtra Rent Act. He, therefore, submitted that no fault can be found with the impugned order.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As mentioned earlier, the suit is instituted on 16.9.1999. It is no doubt true and cannot be disputed that the Maharashtra Rent Act came into effect w.e.f. 31.3.2000. Thus the suit was instituted when the Bombay Rent Act was in force. Section 58(2)(a) & (b) of the Maharashtra Rent Act reads thus :

“58. Repeal and saving .--

(1) xxxx

(2) Notwithstanding such repeal--

(a) all applications, suits and other proceedings under the said Acts pending, on the date of commencement of this Act before any Court, Controller, Competent Authority or other office or authority shall be continued and disposed of, in accordance with the provisions of the Acts so repealed, as if the said Acts had continued in force and this Act had not been passed;

(b) the provisions for appeal under the Acts so repealed shall continue in force in respect of applications, suits and proceedings disposed of thereunder;

(c) xxxx

(d) xxxx”

8. In view of the above extracted provisions as the suit is instituted under the Bombay Rent Act, which is repealed by the enforcement of the Maharashtra Rent Act, the suit as also appeal and

further proceedings will be governed by the provisions of the Bombay Rent Act. Instead of considering the effect of Section 58(2)(a) & (b) of the Maharashtra Rent Act, the learned District Judge reproduced Section 2(2) of the Maharashtra Rent Act, which was not at all relevant for deciding whether the suit is governed by the Bombay Rent Act or Maharashtra Rent Act. In view thereof, the impugned order cannot be sustained and as such is liable to be set aside. Hence, C.R.A. is disposed of in the following terms :

- i. The impugned judgment and decree dated 29.1.2016 passed by the learned District Judge-5, Sangli in Regular Civil Appeal No.159/2010 is set aside.
- ii. Regular Civil Appeal No.159/2010 is restored to its original position. The learned District Judge will decide the appeal on the basis that it is governed by the Bombay Rent Act.
- iii. All contentions of the parties in that regard are expressly kept open.
- iv. Rule is made absolute in aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)