

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL APPLICATION NO. 240 OF 2019

IN

CIVIL REVISION APPLICATION NO. 501 OF 2018

Imperial Tube & Hardware Mart & Anr. ...Applicants

Versus

Noor Mohamed Ibrahim Tambe ...Respondent

Jaydeep Deo - Advocate for the applicant.

Akshay Kapadia i/b Rahul S. Kadam – Advocate for the respondent.

CORAM : DAMA SESHADRI NAIDU, J.

DATE : 5th AUGUST 2019.

P.C. :

The applicant is the tenant, and the respondent the landlord.

2. The landlord filed a suit in 1998 to have the applicant evicted on the grounds of rent-default. On 16.10.2006 the trial Court decreed the Suit. Aggrieved, the tenant filed an Appeal. But on 07.02.2018, the Appellate Bench of the Small Cause Court dismissed that Appeal. Further aggrieved, the tenant filed this Civil Revision Application.

3. This Court, through its order dated 25.3.2019, required

the Appellate Bench to examine one particular issue and return its findings to this Court.

4. To be explicit, I may extract the material part of this Court's direction in its order dated 25.03.2019:

Thus, what is relevant while passing eviction decree is to find out the position as on first date of hearing i.e. in the present case as on 3.7.2003. A perusal of the order passed by the Appellate Court does not show that the Appellate Court was aware of the fact that the issues were framed on 3.7.2003. In paragraph-23, the Appellate Court without referring to the date of framing of the issues on 3.7.2003, observed that the rent and permitted increases were not deposited on the first date of hearing. In view thereof, it is necessary to exercise the powers under Order XLI Rule 25 of C.P.C. and invite finding from the Appellate Court as regards the position obtaining as on 3.7.2003. The Appellate Court will hear the parties and after considering the material on record including the report of the Nazir Department of the Small Causes Court, Mumbai as regards deposits made by the defendants post order dated 3.10.2001, will record finding and transmit the same to this Court. The learned Counsel appearing for the parties assure that they will appear before the Appellate Court on 1.4.2019 and for that purpose no fresh notice be issued to them. The Appellate Court is requested to fix a suitable date and decide this issue on or before 29.4.2019 and shall transmit the finding to this Court before the next date of hearing.

5. Now both the counsel agree that the Appellate Bench of the Small Cause Court complied with this Court's directions and returned its findings on the issue this Court referred to it.

6. In the context of the above development, the applicant-tenant has sought amendment to his Civil Revision Application, first to incorporate the Appellate Benches findings in the record and, second, to incorporate the additional grounds in the pleadings, covering those findings.

7. In response to the submission made by the applicant's counsel, the respondent's counsel has, however, objected to the amendment.

8. After hearing both the parties, I reckon the respondent's objections are technical. At any rate, once an additional finding has been rendered, it is imperative for the parties on either side to amend their pleadings suitably and raise, if necessary, additional contentions.

Under these circumstances, I allow the Civil Application No. 240 of 2019, without prejudice to the respondent's contentions on merits. The applicant's counsel to comply the amendments in two weeks. Post the Civil Revision Application No. 501 of 2018 thereafter. The applicant to serve the amendment copy on the respondent.

[DAMA SESHADRI NAIDU, J.]