

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

SECOND APPEAL NO.710 OF 2018

Dilip Shankarrao Patil ... Appellant
Versus
Shetkari Sahakari Sangh Ltd. & Ors. ... Respondents

.....
Mr. Chetan G. Patil for Appellant.
Mr. Ruturaj P. Pawar for Respondents.

CORAM : M. S. KARNIK, J.
DATE : 21st JUNE, 2019.

ORAL JUDGEMENT

1. Heard learned counsel for the appellant and learned counsel for the respondents.
2. Admit.
3. By consent of the parties the Appeal is heard forthwith as a short question is involved.
4. In the present Appeal following substantial question of law is involved :-

“ Whether the respondent is a Corporation within the meaning of the Maharashtra Rent Control Act so as to exclude the applicability of the said Act as a result of which the City Civil Court would get jurisdiction to hear and decide the Suit ?”

5. In this Appeal the judgment and decree passed by the First Appellate Court dated 13.06.2018 is under challenge. The appellant is the original plaintiff. The Trial Court directed the respondents to hand over the possession of the suit property to the plaintiff within six months. In Appeal the decree of the Trial Court came to be reversed. The Appellate Court was of the opinion that the appellant-plaintiff could not prove that the defendant is a Company within the meaning of the Companies Act.

6. When this Appeal was heard learned counsel for the appellant raised a plea that the respondent is a Corporation within the meaning of Section 3 of Maharashtra Rent Control Act ('M.R.C. Act' for short). He would therefore contend by relying upon the decision of the Apex Court in the case of **Daman Singh and others Versus State of Punjab and others** reported in **(1985) 2 Supreme Court Cases 670** that the respondent is a Corporation within the meaning of the M.R.C. Act and therefore the said Act is not applicable. Learned counsel for the respondents on the other hand submitted that this issue was never raised before the Trial court or the First Appellate Court. The

appellant has in this Appeal raised this plea for the first time. He would therefore submit that this can not be permitted.

7. Learned counsel for the appellant would then contend that this is a pure question of law which would not require any evidence and can be raised at any stage. Learned counsel for the respondents however would submit that they have not raised this plea before the Trial Court or the First Appellate Court. Later on however considering that the question involved is a question of law, learned counsel for the respondents on instructions fairly submitted that in the event this Court is inclined to remand the matter back to the Trial Court by setting aside the judgment and decrees of the Trial Court as well as the First Appellate Court, the plea could be raised by the appellant before the Trial Court by carrying out necessary amendments to the plaint so that the respondents could raise their defence on this issue.

8. In this view of the matter, the impugned judgment and decrees of the courts below are set aside. The matter is remanded back to the Trial Court so as to enable the appellant to raise the plea that the respondents is a Corporation within the meaning of Section 3(1)(b) of the M.R.C. Act. Learned counsel would submit

that he would make an application for carrying out necessary amendments to the plaint. The Trial Court to decide the issue without being influenced by any of the observations made by me in this order and on its own merits and in accordance with law. Since the Suit is of the year 2005, the Trial Court is requested to expedite the Suit.

9. The Appeal is partly allowed in the above terms with no order as to costs.

(M. S. KARNIK, J.)