

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL REVISION APPLICATION NO. 06 OF 2019

Rahul Transport Pvt. Ltd., through its Managing Director, Rahul Lalbhai Mehta
vs.

The Corporation of the Sister of the Holy Cross, Amravati

Office Notes, Office Memorandum of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri. J. B. Kasat, counsel for applicant.
Shri. J. A. Anthony, counsel for respondent.

CORAM : MANISH PITALE J

DATED : 12/12/2019

By this revision application the applicant (original defendant) has challenged judgment and order dated 30/11/2018, passed by the Court of Principal District Judge, Amravati (Appellate Court), whereby appeal filed by the respondent (original plaintiff) stood allowed, as a result of which the judgment and order passed by the Joint Civil Judge Senior Division, Amravati (Trial Court) was set aside and a decree of eviction was granted in favour of the respondent, directing the petitioner to deliver vacant possession of the suit plot to the respondent herein within a period of two months from the date of the judgment.

2. The respondent herein had filed a suit for ejectment, possession, arrears of rent and damages against the applicant (original defendant) on 10/09/1993. In this

suit, the applicant raised fundamental objection that the suit for ejectment filed by the respondent(original plaintiff) was not maintainable in the absence of permission of the Rent Controller under Section 13A under the C. P. and Berar Rent Control Order, 1949. The Appellate Court took into consideration the said provision and came to the conclusion that in the absence of permission from the Rent Controller under the provision of Rent Control Order, the respondent could not have maintained the suit for ejectment and possession against the applicant. Accordingly, the suit was dismissed.

3. Aggrieved by the same, the respondent filed appeal before the Appellate Court. By the impugned judgment and order, the order of the Trial Court was set aside and decree was granted in favour of the respondent.

4. The learned counsel for the applicant points out that the Appellate Court committed a grave error on the aforesaid basic question concerning mandatory requirement of permission of the Rent Controller under the provision of the Rent Control Order, for the respondent to maintain a suit against applicant. It was submitted that the Appellate Court did not appreciate the relevant provision of Clause 13A of the Rent Control Order and the position of law demonstrated on behalf of the applicant to the effect that by judgment of this Court and the Hon'ble Supreme Court the mandatory nature of the said requirement had been upheld. It was pointed out that the Appellate Court proceeded on the erroneous basis

that amendment in the Rent Control Order was carried out in the year 2010 and since suit was filed in the year 1993, such amendment to the Rent Control Order introducing the mandatory requirement of seeking permission of Rent Controller could not be applied in the facts and circumstances of the present case.

5. It was submitted that, in fact, the Rent Control Order itself stood repealed after enactment of the Maharashtra Rent Control Act, 1999 and therefore, the reasoning of the Appellate Court was based on a glaring error of appreciation of facts leading to perverse findings.

6. The learned counsel for the respondent could not demonstrate how the basis of the aforesaid finding of the Appellate Court could be justified.

7. In this situation, it becomes evident that admitted facts in the present case demonstrate that the Appellate Court proceeded on a completely erroneous basis on facts while setting aside the order passed by the Trial Court. It is an admitted position that Clause 13A of the Rent Control Order, requiring permission of the Rent Controller before institution of suit for ejectment, was introduced in the year 1989 by way of amendment. The suit in the present case was filed by the respondent in the year 1993. Accordingly, the Trial Court found that the mandatory requirement of 13A of the Rent Control Order applied in the facts of the present case and in the absence of permission from the Rent Controller, the

respondent was not entitled to decree for ejectment and possession. It is also an admitted position that the Rent Control Order stood repealed in the year 1999 when the Maharashtra Rent Control Act, 1999 was enacted.

8. Thus, the Appellate Court has committed an obvious error by proceeding on the basis that the Rent Control Order was amended in the year 2010, whereby the aforesaid mandatory requirement was introduced and that since the suit was filed in the year 1993, the Trial Court had erred in dismissing the same. The said glaring error on facts has vitiated the Appellate Court order completely and therefore, it deserves to be set aside. There is no reason for this Court to remand the matter to the Appellate Court, because, as noted above, the Rent Control Order itself stood repealed after enactment of the Maharashtra Rent Control Act, 1999.

9. In view of the above, the revision application is allowed. The impugned order passed by the Appellate Court is quashed and set aside and that of the Trial Court is restored. The respondent would be at liberty to take such steps as available under law for seeking eviction of the applicant from the suit premises.

JUDGE