

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

CIVIL APPLICATION (CAW) NO. 1136/2018

IN

WRIT PETITION NO. 3293/2017

Ganesh G. Kapse

..VS..

Maojibhai B. Patel & ors.

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

Court's or Judge's orders

Shri S.B. Tiwari, Advocate for the applicant/petitioner

Shri M.R. Johrapurkar, Advocate for the non-applicant/respondent no. 1

CORAM : Z.A.HAQ, J.

DATED : 18/06/2019

The legal representatives of the petitioner have filed this application seeking permission to come on record as petitioners.

Accepting the submission made by the applicants, they are permitted to come on record as petitioners.

The civil application is **allowed** accordingly.

WRIT PETITION NO. 3293/2017

In the civil suit filed by the respondent no. 1 against the respondent nos. 2 (a) to 2 (e) praying for decree for eviction and possession, only the petitioner – Ganesh Gunwant Kapse had filed an application (Exh. 46) seeking permission to come on record as defendant. This application was allowed by the trial Court by the order dated

02/04/2012. The order passed by the trial Court was challenged by the present respondent no. 1 before the District Court by filing appeal under Section 34 of the Maharashtra Rent Control Act, 1999 (for short "the Act of 1999"). Subsequently, the appeal was converted into revision and the revision is decided by the District Court by the impugned order. The learned District Judge has allowed the revision and has set aside the order passed by the trial Court on the application (Exh. 46) and has dismissed the application (Exh. 46).

During the pendency of this petition, Ganesh Gunwant Kapse died and his legal representatives are brought on record.

The contention of the petitioners is that the respondent no. 2 was tenant of the original petitioner - Ganesh Gunwant Kapse and had been paying rent to the original petitioner, and the respondent no. 1 has no right to seek decree for eviction and possession. According to the petitioners, the issue of title would also arise, and therefore the Small Cause Court cannot decide the civil suit.

One of the submission on behalf of the petitioners is that the revision application filed by the respondent no. 1 before the District Court was not maintainable.

The learned advocate for the respondent no. 1 contends that this objection was not raised before the District Court.

Be that as it may, as the objection is relating to the jurisdiction of the District Court to entertain and decide the revision application, in my view, it requires consideration.

To support the submission that the revision application was not maintainable before the District Court, the learned advocate for the petitioners has relied on the judgment given by the Full Bench of this Court in the case of Bhartiben Shah vs. Gracy Thomas and others reported in 2013 (2) Mh.L.J. at page 25. The Full Bench has held that the revision application under Section 34 (4) of the Act of 1999 will not be maintainable against a procedural order passed by the trial Court, and if such order does not affect the rights of the parties under the Act of 1999 or any other substantive law. In my view, the order passed by the trial Court on the application (Exh. 46) will not fall under the category of procedural order and it definitely decided the substantive rights of the parties. The order passed on the application (Exh. 46) might have resulted in dismissal of the civil suit filed by the respondent no. 1 for non - joinder of the necessary party, if taken to its logical conclusion. Hence, as I find that the order passed by the trial Court on the application (Exh. 46) was not a procedural order and it decided the substantive rights of the parties, the revision application filed by the respondent no. 1 was maintainable.

On merits, the facts on record show that the original petitioner - Ganesh Gunwant Kapse had executed sale-deed of the suit property in favour of the respondent no. 1 and the name of the respondent no. 1 is mutated in the revenue records. The legal representatives of Prabhavati (sister of Ganesh Gunwant Kapse) have filed another civil suit

praying for decree for cancellation of the sale-deed executed by Ganesh Gunwant Kapse in favour of the respondent no. 1 and the civil suit is pending. It is on record that the legal representatives of Prabhavati who have filed the civil suit praying for decree for cancellation of the sale-deed executed by Ganesh Gunwant Kapse in favour of the respondent no. 1 have executed a deed confirming the transfer of title in respect of the suit property by Ganesh Gunwant Kapse in favour of the respondent no. 1. Though the petitioners claim that the respondent no. 2 had been paying rent to the original petitioner - Ganesh Gunwant Kapse, nothing is placed on record to substantiate this contention.

In the above facts, I find that the learned District Judge has properly appreciated the controversy and has rightly passed the impugned order. I see no reason to interfere with the impugned order.

The writ petition is **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE

Ansari