

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 432 of 2020
WITH
INTERIM APPLICATION NO.2393 OF 2020
IN
SECOND APPEAL NO. 432 OF 2020

Banvarilal Ramdev Goenka .. Appellant
Versus
Ganpati Dnyanoba Pawar .. Respondent
...

Mr. V.S. Kapse with S.S. Redekar for the appellant.
Mr. N.J. Patil i/b Akshay Patil for the respondent.

CORAM: BHARATI DANGRE, J.
DATED : 4th APRIL, 2022

P.C:-

1 On being confronted with the bar imposed under sub-section 3 of Section 34 of the Maharashtra Rent Control Act, the learned counsel for the appellant concede to the legal position and seek withdrawal of the present Second Appeal, which is not maintainable.

 He also seek liberty to file appropriate proceedings which would be a Civil Revision Application being aggrieved by judgment delivered by the District Judge, Ichalkaranji on 23/1/2020, though purportedly in an Appeal being filed under

Section 96, Order 41 of the CPC. However, since nomenclature of proceedings would not determine its nature and since the original suit and the relief granted therein directed delivery of possession by the defendants, and since the defendants were directed to pay a sum for unauthorized use of the suit property, it will have to be treated as an Appeal filed under sub-section(3) of Section 34, though wrongly titled and entertained as Appeal under Section 96 of the Code of Civil Procedure.

2 Since the Second Appeal instituted was within the period of limitation and the Appeal cannot be entertained, he seeks liberty to file a Civil Revision Application as the conspectus of the Appeal as well as Revision Application is quite distinct. The learned counsel pray that the stay which is operating in the Second Appeal shall be continued for a period of four weeks from today.

3 In the wake of the aforesaid, since the appellant was prosecuting the wrong remedy, he is entitled to take the benefit of the same and upon the application being made to condone the delay, the Court will accordingly consider the same.

4 The certified copy of the judgment and decree which is filed in the Appeal shall be remitted back to the appellant by the Registry on an application being made, to be presented in the Revision Application.

Record and Proceedings received in this Court shall

be retained by this Court till the filing of the Civil Revision Application, and if so filed, it shall be attached to the proceedings in the Revision Application.

In view of the disposal of the Second Appeal, Interim Application does not survive and is disposed off.

(SMT. BHARATI DANGRE, J.)