



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

CIVIL REVISION APPLICATION NO. 221 OF 2023

M/s. Bhimale & Sons,
thr. Partners N.H.Bhimale
(Decd) Thr. LRs.
Sunita Narayan Bhimale
& Anr.

..Applicants.

v/s.

Moti Dinshaw Irani & Ors.

..Respondents

Sr. Adv. Mr. P.S.Dani a/w. Prasad Kulkarni for the Applicants.
Mr. Suryajeet P. Chavan for the Respondent.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : 1st SEPTEMBER, 2023.**

P.C.

1. Learned Counsel for the Respondent No.1 states that the Respondent No.1 has expired leaving behind Respondent No.2 as the sole legal representative. Necessary entry be made in the cause title against the name of Respondent No.1.

2. With consent, heard finally at the stage of admission. This civil application impugns judgment dated 23.01.2023 in Regular Civil Appeal No. 560 of 2014. By the impugned judgment, the learned Adhoc District Judge-4, Pune dismissed the appeal as well as the cross objection filed by the Respondent Nos.1 and 2, and confirmed the judgment and decree dated 9.9.2014 passed by the trial Court in Civil

Suit No. 195 of 2010.

3. Heard Mr. Dani, learned Senior Counsel for the Applicants and Mr. Chavan, learned Counsel for the Respondent. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties.

4. The Respondent Nos.1 and 2 are the original Plaintiffs, whereas the Applicant herein is the legal representative of the original Defendant nos.2 and 3. (hereinafter referred to as the Plaintiff and Defendant respectively). The Plaintiff had filed a suit for eviction on the ground of change of user, default of payment of rent, permanent alteration, subletting etc. The suit was contested by the Defendant. Upon considering the evidence on record, the learned trial court decreed the suit on the ground of default and directed the Defendants to hand over the possession of the suit premises to the Plaintiffs.

5. Being aggrieved by the said judgment, the Defendants filed an appeal before the Appellate Court. During the pendency of the appeal the Defendants also filed an application under Order 41 Rule 27 of C.P.C. stating that they have deposited the rent and interest before the lower Court. They had sought leave to place on record rent receipts as well as Court receipts and certified copies of property card.

6. By order dated 27.06.2018 the Appellate Court rejected the application. Being aggrieved by the said order, the Defendants had filed a Petition No. 12605 of 2018, which came to be disposed of by order

dated 5.12.2018 with direction to the Appellate Court to decide the said application along with the main appeal, as per the judgment of the Apex Court in ***State of Rajasthan vs. T.N.Sahani & Ors. (2001) 10 Supreme Court Cases 619.***

7. In terms of the said order, the Appellate Court was required to decide the application under Order 41 Rule 27, and in the event additional evidence was allowed to be produced, take recourse to Rule 28 of Order 41 CPC. The records reveal that the learned Judge has decided the appeal on merits without deciding the application under Order 41 Rule 27 of CPC.

8. In such circumstances, there is no other option, but to remand the matter to the Appellate Court with direction to comply with the order dated 5.12.2018 and to decide the application under Order 41 Rule 27.

9. The application and the appeal be decided as expeditiously as possible, and in any event, within a period of three months from the date of the order.

10. Parties to appear before the First Appellate Court on 6th September, 2023.

11. Application is disposed of.

(ANUJA PRABHUDESSAI, J.)