



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 14586 OF 2024

1. Dr. Vinayak Vishnu Ghanekar
(since deceased through Lrs)

- 1A. Vidya Vinayak Ghanekar
- 1B. Sadashiv Vinayak Ghanekar
- 1C. Dr. Tejashri Mohan Lele
- 1D. Artee Deepak Amdekar

2. Dr. Advocate Bhaskar Vishnu Ghanekar (deceased)

- 2A. Smt. Savita Bhaskar Ghanekar
- 2B. Shri Bhalchandra Bhaskar Ghanekar
- 2C. Miss Reshma Bhaskar Ghanekar

3. Shri Dattatraya Vishnu Ghanekar (deceased)

- 3A. Smt. Nirmal Dattatraya Ghanekar
- 3B. Mrs. Shrilekha Yayati Pethe
- 3C. Ms. Amarja Dattatray Ghanekar

4. Shri Nilkanth Vishnu Ghanekar

- 4A. Mrs. Uma Nilkanth Ghanekar
- 4B. Mrs. Nilima Milind Agashe
- 4C. Mr. Jitendra Nilkanth Ghanekar
- 4D. Mrs. Vinaya Sumod Pawgi

...Petitioner

Vs.

1. Smt. Nirmala Namdeo Wagh

2. Sou. Ashwini Audumbar Khune

...Respondents

Mr. S. S. Kanetkar	Advocate for the Petitioner
Mr. Kishor Patil i/by Mr. Pratik B. Rahade	Advocate for the Respondents

CORAM : S. M. MODAK, J.

DATE : 21st OCTOBER 2024**ORAL JUDGMENT :-**

1. Not on board. By way of praecipe and considering the issue involved, the Writ Petition is taken on board.
2. Heard by consent at an admission stage. Heard learned Advocate Shri Kanetkar for the Petitioner-Appellant and learned Advocate Shri Kishor Patil for the Respondents-Defendants.
3. The suit filed by the present Petitioner for specific performance (so to say directing the Defendant No. 1 to renew the lease of the suit property) got dismissed by the trial Court as per judgment dated 03.03.2021. It was dismissed after evidence. Now the appeal of these Petitioners bearing Reg. Civil Appeal No. 56 of 2021 is pending before the Appellate Court and even the Appellate Court has started hearing the arguments.

4. There is also suit filed by Defendant No. 1 against the present Petitioner for possession, and it is decreed. It is subject matter of challenge by way of separate appeal by these Petitioners.

5. During pendency of the appeal, the present Petitioners filed an application below **Exh. 36** making request to remand the matter to the trial Court for the reasons stated in the application. This prayer was opposed by Respondent No. 1 by way of reply, at exh. 37. There is counter affidavit/rejoinder of the Petitioners page no. 105.

6. By way of **Exh. 42**, the present Petitioners requested the Appellate Court to decide the application for remand at Exh. 36 first prior to deciding the appeal. **The Appellate Court rejected the said application** for the reason that the Petitioners have argued for more than twenty hours. Even the Appellate Court observed that the arguments are not deliberately concluded. This is disputed on behalf of the Petitioners.

7. The Appellate Court further observed that no Party can direct to the Court to decide application for remand first, 'hence it was rejected'. **This Order is passed on 25.07.2024. It is under challenge by way of writ Petition.**

8. It is true that there is provision for remand under **Order 41 Rule 23** of the Civil Procedure Code. This is applicable when the decree is passed on preliminary issues. If decree is not on preliminary issues, still there is provision for remand as per Order 41 Rule 23A of the Civil Procedure Code. The rule provides guidelines to the Appellate Court. **This can be done in two contingencies:-**

- (i) When the decree is reversed in the appeal.
- (ii) Re-trial is considered necessary.

9. I am not inclined to interfere in the impugned Order for the reason that the Appellants-Petitioners have argued for sufficient long period of time. Whether arguments are completed or not that is different issue. The thing is when the Petitioners have proceeded in one direction and even the Appellate Court has considered it and heard the matter (though not entirely, but for sufficient long period) it is not justified on the part of the Petitioners to insist on hearing of the remand application first earlier to final disposal of the appeal.

10. So I am dismissing the petition. Hence, following order is passed:-

ORDER

- (i) Writ Petition is dismissed.
 - (ii) At the same time, I am granting liberty to the Petitioners to argue for remand as per Order 41 Rule 23A of the Civil Procedure Code.
 - (iii) Even I am directing the Appellate Court to deal with the grounds taken for remand and to pass an appropriate Order, if remand is required. This has to be done while deciding the appeal finally.
11. Accordingly, Writ Petition is also disposed of.

[S. M. MODAK, J.]