



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

WRIT PETITION NO. 2342 OF 2019

Shri Balasaheb S/o Kashinath Choudhary,
Aged about 76 years, Occ. Medical
Practitioner
R/o Shivaji Ward, Rail Toli, Gondia, District
Gondia

...Petitioner

// VERSUS //

1. Morarjibhai S/o Gokuldas Sonchhatra,
Aged about 80 years (Dead)
through its legal heirs
- 1a) Mansukhlal Morarjibhai Sonchhatra (dead)
through legal representatives
- 1a-i) Dharmesh Mansukhlal Sonchhatra
Aged about 54 years, Occ. Business
- 1a-ii) Ekanchhi Mansukhlal Sonchhatra,
Aged about 49 years, Occ. Nil
- 1a-iii) Girish Mansukhlal Sonchhatra
Aged about 50 years, Occ. Business
All above R/o Ambalchoju, Ramnagar,
Gondia
- 1a-iv) Vandana W/o Rakesh Gotecha
Aged about 49 years, Occ. Household
R/o Orchid Building, Raheja Gardens,
Wanwadi, Pune 411 040
- 1b) Trimbaklal Morarjibhai Sonchhatra,
Aged about 67 years (dead)
- B1) Jasmin Rajeshkumar Seth,
Aged about 38 years, Occ. Service,
R/o Near Jalaram Mandir, Ramnagar,
Gondia, Teh. & Dist. Gondia

- B2) Vikesh S/o Trimbaklal Sonchhatra,
Aged about 41 years, Occ. Business
R/o Near Gujar Chowk, Ramnagar,
Gondia, Tehsil & Dist. Gondia
- C) Bharat Morarjibhai Sonchhatra,
Aged Major, (Dead)
- C1) Kusumben Wd. Bharat Sonchhatra,
Aged about 61 years, Occ. Household
- C2) Hitesh S/o Bharat Sonchhatra,
Aged about 33 years, Occ. Business
- C3) Hemanshu S/o Bharat Sonchhatra,
Aged about 30 years, Occ. Service
- D) Madan Morarjibhai Sonchhatra,
Aged about 58 years, Occ. Business
- E) Mukesh Morarjibhai Sonchhatra,
Aged about 53 years, (Dead)
- E1) Bharti Wd/o Mukesh Sonchhatra
Aged about 56 years, Occ. Household
- E2) Chetan Mukesh Sonchhatra
Aged about 34 years, Occ. Business
- E3) Chetali W/o Vishalkumar Popat,
Aged about 32 years, Occ. Household
C/o Shri Rameshchandra Popat,
Dabak Road, Old City, Akola
- F) Nandkishor Morarjibhai Sonchhatra
Aged about 51 years, Occ. Business
- G) Lalit Morarjibhai Sonchhatra,
Aged about 47 years, Occ. Business
- H) Mayabai Wd/o Morarjibhai Sonchhatra,
Aged 75 years (Dead)
Respondent nos. 1a, c, c1 to D, E1 to H
R/o Shivaji Ward, Rail Toli, Gondia, Tah &
District Gondia
- I) Gunwantiben Hasmukhlal Unadkat
Aged about 62 years, Occ. Household
R/o Main Road, Jalgaon, Jamod
District Buldhana
- J) Nilamben Arvindkumar Tanna,

Aged about 50 years, Occ. Household
R/o Mangalmurti Apartment, 2nd Floor,
Khare Town, Dharampeth, Nagpur, Dist.
Nagpur

3. Ashok S/o Morarjibhai Sonchhatra,
Aged about 60 years, Occ. Business
R/o Shivaji Ward, Raitoli, Gondia,
Tah. & Dist. Gondia

... Respondents

Shri H.I.Kothari, Advocate for the petitioner.
Shri A.N.Vastani, Advocate for the respondent nos. B1, B2.

CORAM : ANIL S. KILOR, J.
DATED : 23rd JANUARY, 2024.

ORAL JUDGMENT :

Heard. **Rule.** Rule made returnable forthwith. Heard finally
by consent of the parties.

2. In this writ petition, the challenge is raised to the judgment
and order dated 5th December, 2018 passed by the Principal District
Judge, Gondia in Regular Civil Appeal No. 35 of 2013 remanding the
Regular Civil Suit No. 293 of 2018 to decide totally afresh.

3. The suit bearing Regular Civil Suit No. 293 of 2001 was filed
by the petitioner for eviction under Section 16(1)(G) of the Maharashtra
Rent Control Act, 1999 and it was decreed vide judgment and decree
dated 20th December, 2012 passed by the Civil Judge, Junior Division,
Gondia.

4. The respondents feeling aggrieved by the same, preferred an appeal i.e. Regular Civil Appeal No. 35 of 2013 before the learned Principal District Judge, Gondia. During the pendency of said appeal, there was some change in circumstances. Accordingly, both the parties amended the plaint as well as written statement.

5. The written statement was amended in view of the subsequent events which took place during the pendency of appeal. Whereas, the amendment to the plaint was the consequential amendment.

6. In view of the subsequent events, the learned First Appellate Court has found it necessary to remand the matter back for fresh determination and to justify such remand the learned First Appellate Court has recorded its findings in paragraphs 14 to 16 of the impugned judgment and order which read thus:

“14) Admittedly, during pendency of the matter, there is some change in circumstance. Both parties have substantially amended their respective pleadings. Both parties have added some factual position. Facts are added by way of amendment. Amendment is particularly referring to the point of bonafide requirement and greater hardship. For the suit of eviction this point is very material and important. Subsequent developments if any are also required to be taken into consideration while determining factors about bonafide requirement and greater hardship. It is specific submissions of appellant/defendant that some documentary evidence was tendered, but that evidence is not properly taken into account by learned Trial Court. On observing judgment of learned Trial Court, I am of the view that there is no proper discussion about documents on record in the judgment of Trial Court. Oral evidence is also not properly

considered by Trial Court while deciding the matter. My attention was drawn towards the principle laid down by the Hon'ble High Court in the case of **Dhirajlal S/o Chunnial Vadera Vs. Kailashchand S/o Ramkumar Tharad, Second Appeal No. 373 of 2010, decided on 15th June 2012.**

15) Some submissions are made about partial eviction. Advocate for appellant/defendant specifically submitted that part of premises which is in occupation of tenant can be given to landlord. Some submissions were made about godown. Such alternative submissions are made during arguments of this appeal. Such partial eviction, this point is required to be taken into account while passing judgment and decree. There is no mention about any such facts regard partial eviction in the judgment and decree of Trial Court. At this juncture, advocate for appellant/defendant pointed out the principles laid down by the Hon'ble High Court in the case of **Gyanchand S/o Parmanand Jain and others Vs. Wamanrao S/o Vyankatrao Shinde, reported in 2010 (6) Mh.L.J. 561.** This authority is relied on by respondent/plaintiff. However, it is submission of appellant/defendant that considering the principles laid down in this matter by the Hon'ble High Court in our matter also retrial is just and necessary.

16] Now at the time of arguing this appeal, some submissions are made regarding new factual aspects. Those are as under:-

- (i) There was one tenant Joshi who has vacated premises, so question to be considered is whether that premises possession of which is obtained by landlord, is sufficient for landlord or not?
- (ii) Another point submitted is about requirements of elder son of plaintiff. He is doing business of medical stores. It is submitted that as he is married, for his residence also premises is necessary. However, appellant/defendant submitted that his wife is now not residing with him. So such facts are also to be considered while determining point of comparative hardship.

- (iii) Thirdly, it is submission of landlord that his another son is also now married. Premises is also required for his business. So, this point is also required to be considered while determining point of bonafide requirement and comparative hardship.”

7. The learned counsel for the petitioner raises a challenge to such remand on the ground that without recording sufficient reasons for such remand the matter was remanded and the trial Court was directed to re-determine the suit. It is submitted that such remand is not permissible and to support his contention he has placed reliance on a judgment of this Court in a case of Sushilkumar Kamalnarayan Jaiswal Vs. Awtarsingh S/o Jawaharsingh Taneja¹.

8. The learned counsel for the respondents while opposing the present writ petition submits that, since it is a suit for eviction, the subsequent events are relevant which shall be considered and therefore the amendment was sought to bring on record the subsequent events which go to the root of the matter as regards the issue of ‘bonafide need’.

9. It is submitted that, the learned Appellate Court has rightly considered it necessary to remand the matter to the trial Court. He further submits that after the remand, the petitioner has participated in the trial, and therefore, the petition filed by the petitioner cannot be entertained.

10. In light of rival contentions, I have perused of the record and the impugned order.

¹ 2023(6) Mh.L.J. 427

11. Before going further, it would be appropriate at this stage to reiterate the law as regards the remand which was considered by this Court in case of *Sushilkumar Kamalnarayan Jaiswal Vs. Awtarsingh S/o Jawaharsingh Taneja*, which read thus:

16. *The Hon'ble Supreme Court of India in the case of Zarif Ahmad (supra), while dealing with the issue regarding deprecating practice to remand the matter to the trial Court, has held thus:*

"13. No doubt, Section 107 CPC empowers the appellate court to remand a case, but it simultaneously empowers the appellate court to take additional evidence or to require such evidence to be taken. Rule 24 Order 41 CPC provides that where evidence on record is sufficient, the appellate court may determine the case finally. It is not a healthy practice to remand a case to the trial court unless it is necessary to do so as it makes the parties to wait for the final decision of a case for the period which is avoidable. Only in rare situations, should a case be remanded e.g. when the trial court has disposed of a suit on a preliminary issue without recording evidence and giving its decision on the rest of the issues, but it is not so in the present case."

17. *Thus, from the above referred discussion, it is evident that Order XLI Rule 24 of the CPC provides that where evidence on record is sufficient, the appellate Court may determine the case finally. No doubt that whether or not the appellate Court should remit the matter is discretionary. However, it would largely depend upon the nature of dispute, the nature of the extent of evidence that may have to be appreciated, the complexity of the issue that arise for determination and whether remand is going to result in avoidable prolongation of the litigation between the parties. Hence, it is not a healthy practice to remand a case to the trial Court, unless it is necessary to do so as it makes the parties to wait for the final decision of a case for the period which is avoidable. Therefore, only in rare situations, a case should be remanded The remand on the ground that points touching*

appreciation of evidence were not dealt with by the trial Court, may not be proper because the first appellate Court is itself possessed of jurisdiction to enter into facts and appreciate evidence. Further the remand cannot be made merely for the purpose of allowing party to fill up the lacuna.

12. Thus, it is evident that whether or not to remand the matter is discretionary and it would largely depend upon the nature of dispute.

13. In the matter at hand, after going through the reasons recorded by the learned Lower Appellate Court, it is evident that the reasons for remand are vague.

14. As far as subsequent events are concerned which are relevant in such matters of eviction under the Maharashtra Rent Control Act, 1999, the learned Appellate Court has every power to record the additional evidence or refer the matter for that purpose to the trial Court by keeping the appeal pending to avoid delay and prolongation. However, none of such option was adopted or no reasons were recorded for not opting for such mode. Hence, I am of the opinion that the learned First Appellate Court committed error in remanding the matter to the trial Court. Accordingly, I pass the following order.

i. The writ petition is allowed;

ii. The judgment and order dated 5th December, 2018 passed by the Principal District Judge, Gondia in Regular Civil Appeal No. 35 of 2013 is hereby quashed and set aside and the matter is remanded back to the learned Appellate Court to decide the same afresh after hearing both

the parties and taking into considerations the observations made herein above.

iii. The learned Appellate Court is directed to expedite the appeal and decide it at the earliest.

iv. The parties shall appear before the First Appellate Court on **7th February, 2024** at 11 am.

[ANIL S. KILOR, J.]