



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

SECOND APPEAL NO.185 OF 2024

Smt. Rani W/o Subhash Chopda and another .Vs. Ravindra Dharamraj Mehetre

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri R.L. Khapre, Senior Adv. a/b Shri P.A. Deshpande, Adv. for appellants.

CORAM : SANJAY A. DESHMUKH, J.

DATED : 30/07/2024

1. Heard Shri Khapre, learned Senior Advocate for the appellants.

2. Shri Khapre, learned Senior Advocate pointed out the description of the suit property that it is situated in the Mehkar city. The learned Senior Advocate for the appellants further pointed out that Schedule-I under Section 2 (2) of the Maharashtra Rent Control Act, 1999 under which Mehkar city, the same Act is applicable to this case. He submits that, there is no specific ground for claiming possession over the suit property by the landlord against the tenant as contemplated by the Maharashtra Rent Control Act, 1999. He further pointed out that the plaintiff issued notice for claiming possession of the suit property. He, therefore, submitted that, the suit itself is not maintainable. However, the first Appellate Court has considered the provisions of Transfer of Property Act, 1882,

particularly Sections 107 and 109. He lastly submitted that there is legal inherent defect/ flaw in the suit itself. This is not maintainable. It is lastly prayed that there are substantial questions of law that are to be decided by this Court. He prays for admission of the appeal and forming substantial questions of law.

3. Considering his submission, the following substantial questions of law are formed:

“Whether question of tenability of suit for want of jurisdiction under the provisions of Maharashtra Rent Act, 1882 even though is was not raised before the first appellate Court can be raised for the first time in second appeal ?”

“Whether the suit is maintainable in the absence of notice either under Section 106 of Transfer of Property Act or by issuing notice of forfeiture of tenancy to be given by the landlord under Section 111(g) of said Act is tenable in law ?

4. Issue notice to the respondents, returnable after **four weeks.**

5. Call record and proceedings.

CIVIL APPLICATION (CAS) NO.640 OF 2024

6. This is an application for grant of stay to the execution of impugned judgment and decree.

7. Perused the application.
8. Heard learned advocates for the appellants.
9. Considering the peculiar set of facts particularly, maintainability of the suit and the jurisdiction of the Court, it would be proper to stay the execution of the impugned judgment and decree as prayed.
10. Thus, there shall be stay in terms of prayer clause (1), till next date.
11. The learned advocate for the appellants has filed some documents along with pursis are taken on record.
12. Civil application is **disposed of**.

(SANJAY A. DESHMUKH, J.)