

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2214 OF 2015

Tukaram Govind Shinde.] ... Petitioner

Versus

Hanif Husain Tambakuwala.] ... Respondent

Mr. Maneesh M. Dixit for Petitioner.

Mr. Sandesh D. Patil for Respondent.

CORAM :- M. S. SONAK, J.
DATE :- AUGUST 31, 2015

P. C. :-

1. Heard learned Counsel for both the parties.
2. This petition challenges Judgments and Decrees dated 14/12/2012 and 06/012/2014 by which the Petitioner's eviction from the suit premises has been ordered on the grounds of reasonable and *bona fide* requirement of the Respondent-landlord.
3. Mr. Maneesh M. Dixit, learned Counsel for Petitioner, submitted that the findings of fact recorded by the two Courts are vitiated by perversity. Mr. Dixit pointed out that the Petitioner, by application dated 03/09/2014, had applied for remand under Order 41 Rule 23 of the CPC, in order to enable the Petitioner to cross-

examine the landlord and his witnesses. This application was made, because the Trial Court, in the impugned Judgment and Decree, had observed that the submissions of the landlord and his witnesses on the aspect of reasonable and *bona fide* requirement has gone unchallenged. The Appeal Court, was duty-bound to decide this application one way or the other, before proceeding to dismiss the appeal. This having not been done, this is a clear case of failure to exercise jurisdiction, which vitiate the impugned Judgments and Decrees.

4. There is some merit in the contention of Mr. Dixit, inasmuch as, the Appeal Court was required to decide the Petitioner's application under Order 41 Rule 23 of the CPC one way or the other before proceeding to dismiss the appeal on its own merits. However, in the peculiar facts and circumstances of the present case, it would not be appropriate to set aside the Appeal Court's Decree dated 06/12/2014 and to remand the matter to the Appeal Court for decision on the application under Order 41 Rule 23 of the CPC.

5. The peculiar circumstances in which, the aforesaid course of action is not adopted is that the Petitioner has merely sought to blame his Advocate for failure to cross-examine the landlord and his witnesses properly and on this ground, has applied for remand under Order 41 Rule 23 of the CPC. In such circumstances, other than remanding the matter back, it would be appropriate if this Court considers the application and determines whether any case was at all

made out for seeking remand. As noted earlier, there is absolutely no cogent reason set out for seeking remand. The Petitioner was afforded every opportunity to cross-examine the landlord and his witnesses. The Petitioner was very much represented by his Advocate. On the ground that the Advocate has not done the needful, remand cannot be applied for at the appeal stage, almost two years after the impugned Judgment and Decree is made by the Trial Court. A very formidable case is required to be made out for seeking a remand and no such case has at all been made out in the application dated 03/09/2014. Accordingly, there is no necessity to remand the matter to the Appeal Court. The application dated 03/09/2014 lacked merits and the same did not deserve to be allowed and the same is deemed to have been rejected.

6. The two Courts, in the present case, have recorded concurrent findings of fact that the ground of reasonable and *bona fide* requirement has been made out. The evidence on record indicates that the Respondent-landlord was residing in the premises along with 13 family members. In these circumstances, if the landlord requires additional accommodation in the form of suit premises, which are incidentally premises in a chawl, it cannot be said that such need is neither reasonable nor *bona fide*. Further, the two Courts recorded findings of fact that the comparative hardship issue would be decided in favour of the Respondent-landlord. For this purpose, the two Courts have held that the Petitioner resides in some other chawl and claims that he comes to sleep in the suit premises. The findings of

fact are sufficiently borne by the material on record. The same cannot be said to be vitiated by any perversity.

7. This Court, under Article 227 of Constitution of India, does not exercise appellate jurisdiction. Therefore, unless it is established that the findings of fact are vitiated by perversity, there is no occasion to interfere with the impugned Judgments and Decrees.

8. Upon cumulative consideration of all the aforesaid facts and circumstances, there is no case made out to entertain the present petition. The same is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)