

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Amk

CIVIL REVISION APPLICATION NO. 499 OF 2008

Shri Anwar Ibrahim Memon .. Applicant
Vs.
Smt. Sadhana Ramesh Dicholkar & Ors. .. Respondents

Mr. S. A. Oak i/b Mr. Sagar Joshi for the Applicants.
Ms. Manorama Murthy i/b M/s. S. K. Srivastav & Co. for Respondent Nos.2
& 3.

CORAM : **MR. R. G. KETKAR, J.**
DATE : **3rd FEBRUARY, 2014.**

P.C.

1. Heard Mr. Oak, learned Counsel for the Applicants and Ms. Manorama Murthy, learned Counsel for Respondent Nos.2 & 3.

2. By this application under Section 115 of the Code of Civil Procedure, 1908 (C.P.C.), the applicant has challenged the judgment and order dated 15th February, 2003 passed by the learned Competent Authority (Rent Act) Konkan Division, Mumbai (for short "Competent Authority") in Case No. 43 of 1995. By that order the Competent Authority allowed the application filed by respondent Nos. 2 & 3 under Section 24 of the Maharashtra Rent Control Act, 1999 (for short "the Act") for eviction of respondent No.1 herein from Flat No.5 situate on 2nd floor in Suraj Apartments, Mahagiri, K. K. Road, Thane and directed respondent No.1 to hand over the vacant and peaceful possession of the suit premises. The

Competent Authority directed respondent No.1 to pay monthly compensation to respondent Nos.2 & 3 at the rate of Rs.2400/- per month from the date of expiry of licence period to the delivery of possession to respondent Nos. 2 & 3.

3. Mr. Oak submitted that on 28.08.1992 the developers namely Sarang Developers executed an agreement of sale in favour of Ramesh Dicholkar, the husband of respondent No.1. On 29.04.1994 a Rectification Deed was executed between the said builder and respondent No.1 herein. The said Rectification Deed is duly registered where-under the suit premises were transferred in the name of respondent No.1. Ramesh Dicholkar, the husband of respondent No.1 executed a registered agreement of sale dated 04.10.1994 in favour of respondent Nos.2 & 3 herein. On the same date respondent Nos.2 & 3 executed leave and licence agreement in favour of Ramesh Dicholkar, the husband respondent No.1. He submitted that sometime in July, 1995 respondent Nos. 2 & 3 filed application under Section 24 of the Act before the Competent Authority. In August, 1996 respondent No.1 made application for her impleadment in this proceeding. The said application was rejected on 04.09.1996. Ramesh Dicholkar expired on 14.06.2002 and respondent No.1 was brought on record in this proceeding as the heir and legal representative of Ramesh Dicholkar sometime ago in September, 2002. On 19.08.2002 respondent

No.1 had executed registered agreement in favour of the applicant herein. By the impugned order, the Competent Authority allowed the application. Against that order the applicant has instituted the present application under Section 115 of the C.P.C.

4. Mr. Oak submitted that by registered agreement of sale dated 04.06.1994 Ramesh Dicholkar sold the property to respondent Nos.2 & 3 and on the same day leave and licence agreement was executed by respondent Nos. 2 & 3 in favour of Ramesh Dicholkar. Since Ramesh Dicholkar failed and neglected to vacate the suit premises, proceeding under Section 24 was initiated by them for recovery of possession of the suit premises.

5. I have heard the learned counsel appearing for the parties. As noted earlier against the order of the Competent Authority dated 15.02.2003 the applicant has directly approached this Court by instituting proceeding under Section 115 of th C.P.C. In the first place, it is necessary to consider whether the applicant can avail an equally efficacious alternate remedy under Section 44 of the Act as also secondly, whether the provisions of the Limitation Act apply to such proceeding. The learned counsel appearing for the parties seek time to address on this aspect.

6. Mr. Oak seeks permission to amend the application so as to bring on record the Rectification Deed dated 29.04.1994. Ms. Murthy opposes the oral application. In view thereof Mr. Oak assures that within one week from today he will take appropriate application and serve a copy on the other side. If such application is filed same may be listed for orders on 14.02.2014.

(R. G. KETKAR, J.)