

IN THE SUPREME COURT OF INDIA  
 CIVIL APPELLATE JURISDICTION  
 CIVIL APPEAL NO. 11347 OF 2013  
 (Arising out of S.L.P. (C) No.26306 of 2011)

VITTHAL DATTATRAY KATKAR

...Appellant

Versus

AMBADAS @ BABAN MARUTI KUMBHAR

...Respondent

O R D E R

Leave granted.

This appeal arises out of an order dated 21st April, 2010 passed by the High Court of Judicature at Bombay whereby Civil Revision Application No.503 of 2007, filed by the respondent-tenant challenging an order passed by the 4th Additional District Judge, Pandharpur, granting a decree for eviction in favour of the landlord-appellant herein has been allowed, the order of the appellate court set aside and the eviction petition dismissed.

We have heard learned counsel for the parties at some length. It is common ground that suit filed by the appellant-landlord urged two distinct grounds for the eviction of the respondent-tenant. In the first place it was alleged by the appellant-landlord that the respondent had made an encroachment on the adjacent property and changed the user of the suit property contrary to Section 108(O) of the Transfer of Property Act, 1882 ("TP Act", for short). Secondly, it was urged that the premises-in-question was bona fide required by the appellant-landlord for reconstruction within the meaning of Section 13 (1) (hh) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ("Bombay Rent Act", for short). The trial court, upon examining the two grounds, found the first ground in favour of the appellant-landlord but declined eviction on the second ground urged by the appellant-landlord. In appeal, the 4th Additional District Judge, Pandharpur, decreed the suit both on the ground of change of user contrary to Section 108(O) of the TP Act as also on the ground of reconstruction within the meaning of Section 13 (1) (hh) of the Bombay Rent Act. Aggrieved by the said judgment and decree, the respondent-tenant filed a revision petition, as mentioned above, before the High Court of Judicature at Bombay which petition has been allowed by the High Court in terms of the order impugned before us.

The High Court, it appears, has taken the view that the appellant-landlord was not entitled to urge Section 13 (1) (hh) of the Bombay Rent Act as a ground for eviction of the respondent-tenant in the absence of a certificate from the Tribunal, in terms of Section 13 (3A) of the Bombay Rent Act. Inasmuch as no such certificate had been produced by the appellant-landlord along with the suit for eviction, the ground urged was not available to the landlord, observed the High Court.

The eviction prayed for by the appellant-landlord was not only on the ground of reconstruction under Section 13 (1) (hh) of the Bombay Rent Act but also on the ground that the respondent-tenant had violated Section 108 (O) of the TP Act. It is, however, evident from a reading of the order passed by the High Court that while the High Court has dealt with the former question and taken a view contrary to the view taken by the Court below it has not touched the ground relating to Section 108 (O) of the TP Act on which ground too the suit for eviction was decreed in favour of the petitioner-landlord. The High Court ought to have examined that ground also, for the decree passed in favour of the appellant-landlord could have been supported by him on either one of the two grounds urged before the Courts below. Inasmuch as the High Court has failed to do so the matter shall have to be remanded back to the High Court for a fresh disposal.

Learned counsel for the appellant-landlord submitted that he may be permitted to file the certificate referred to in Section 13(1)(hh) read with Section 13(3A) of the Act no matter such a certificate was not produced earlier ostensibly because no objection regarding its absence was raised by the respondent-tenant at any stage. Learned counsel for the respondent, however, opposed that submission. According to him no certificate is available with the appellant even today and that the same could have in any case been filed only at the time of the institution of the suit.

Be that as it may, we do not propose to express any opinion on the question whether a certificate can be obtained by the appellant-landlord at

this stage and if so whether the same can be permitted to be placed on record by the High Court. All that we need say is that in case the appellant-landlord files an application for permission to produce a certificate within the meaning of Sections 13(3A) and 1 (3B) of the Bombay Rent Act, the High Court may examine the prayer and pass appropriate orders in accordance with law.

In the result, we allow this appeal, set aside the judgment and order passed by the High Court and remit the matter back to that Court for a fresh disposal keeping in view the observations made by us herein above. Parties are directed to appear before the High Court on 17th February, 2014. All other contentions urged before us are left open. No costs.

.....J.  
(T.S. THAKUR)

.....J.  
(J. CHELAMESWAR)

NEW DELHI

DATED : 6th December, 2013.

ITEM NO.39

COURT NO.7

SECTION IX

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s).26306/2011

(From the judgement and order dated 21/04/2010 in CRA No.503/2007 of The HIGH COURT OF BOMBAY)

VITTHAL DATTATRAY KATKAR

Petitioner(s)

VERSUS

AMBADAS @ BABAN MARUTI KUMBHAR

Respondent(s)

(With appln(s) for c/delay in refiling SLP,c/delay in filing SLP and prayer for interim relief and office report)

Date: 06/12/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR

HON'BLE MR. JUSTICE J. CHELAMESWAR

For Petitioner(s) Mr. Satyajit A. Desai,Adv.

Mr. Somanath Padhan,Adv.

Ms. Anagha S.Desai,Adv.

For Respondent(s) Mr. Vinay Navare,Adv.

Mr. Satyajeet Kumar,Adv.

Mr. Keshav Ranjan,Adv.

Ms. Abha R. Sharma,Adv.

UPON hearing counsel the Court made the following

O R D E R

Delay condoned.

Leave granted.

The appeal is allowed and the matter is remitted back to the High Court in terms of the signed order:

"In the result, we allow this appeal, set aside the judgment and order passed by the High Court and remit the matter back to that Court for a fresh disposal keeping in view the observations made by us herein above. Parties are directed to

appear before the High Court on 17th February, 2014. All other contentions urged before us are left open. No costs."

| (Mahabir Singh)  
| Court Master

| (Veena Khera)  
| Court Master

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