REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOs. 4266-4267 OF 2014
(arising out of SLP(C)Nos.5990-5991 of 2011)

KALPESH HEMANTBHAI SHAH ... APPELLANT

VERSUS

MANHAR AUTO STORES
THROUGH ITS PARTNER & ORS. ... RESPONDENTS

J U D G M E N T

Sudhansu Jyoti Mukhopadhaya, J.

Delay condoned. Leave granted.

2. These appeals have been preferred by the appellant-landlord against the judgment and decree dated 23rd February, 2010 passed by the Single Judge of the High Court of Judicature at Bombay, Nagpur Bench in Writ Petition No.5521 of 2009 and the judgment and decree dated 1st October, 2010 passed by the Division Bench in LPA No.150 of 2010.

3. The appellant-original plaintiff is the landlord and the respondents-original defendants are the tenants with respect to

suit premises which is a shop admeasuring approximately 200 sq. ft. on the ground floor in the building named “Savita Sadan” bearing New Municipal House No. 323 (2) in New Ward No.23, Mofusil Plot, Morshi Road, Amravati.

4. After notice to the tenants to vacate the suit premises on the ground of personal use, in absence of any positive response, the appellant filed Small Cause Civil Suit No.16 of 2007 in the Court of Civil Judge, Junior Division, Amravati seeking eviction of the respondents. The respondents filed their written statement denying the bonafide need of the appellant. Witnesses were examined and evidences were brought on record. Thereafter, 3rd Joint Civil Judge, Junior Division, Amravati (hereinafter referred to as, ‘the Trial Court’) dismissed the civil suit.

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5. Aggrieved by the order of dismissal, the appellant challenged the same in Regular Civil Appeal No. 140 of 2008 in the Court of Principal District Judge, Amravati (hereinafter referred to as, ‘the Appellate Court’). On hearing the parties, the Appellate Court vide judgment dated 31st October, 2009 allowed the appeal and directed the respondents to handover vacant and peaceful possession of the suit premises to the appellant. The said

judgment was challenged by the respondents in Writ Petition No.5521 of 2009 and the same was allowed by the High Court by the impugned judgment dated 23rd February, 2010. The Letters Patent Appeal preferred by the appellant against the said judgment was not entertained being not maintainable by impugned judgment dated 1st October, 2010.

6. Learned counsel for the appellant submitted that the High Court under Articles 226 and 227 of the Constitution of India had no jurisdiction to sit in appeal and set aside the finding of facts arrived at by the Court below. It was not a second appeal preferred by the respondents, in fact no second appeal was maintainable against the Appellate Court's order in absence of any substantial question of law.

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7. Per contra, according to learned counsel for the respondents, if there are mixed question of facts and law, the High Court can interfere with the concurrent finding of facts under Articles 226 and 227 of the Constitution of India.

8. In the present case, on the question of reasonable and bonafide need, the Trial Court answered the issue against the

appellant on the ground that the appellant failed to prove his requirement of suit premises. The Appellate Court on appreciation of evidence came to a definite conclusion that the appellant is the landlord within the meaning of Section 7(5) of the Maharashtra Rent Control Act and the suit shop is reasonably and bonafidely required by the appellant for his use and occupation. The Appellate Court further held that it would cause comparative hardship to appellant than the respondents if decree of eviction is refused. In light of such observation and finding, the appeal was allowed and the respondents-tenants were ordered to vacate the suit premises.

9. The High Court by the impugned judgment held:

> *"It is not a case of landlord stating outright that the premises of his parents are not available to him, but of the landlord, who tried to explain the use of the premises by his parents and failed to show that all the rooms available on the ground floor are used by his parents. Therefore, applying yardstick indicated by the Supreme Court in the case of Badrinarayan Vs. Govindram, namely, degree of urgency and intensity of the felt-need, it has to be held that the respondent had failed to dispel the case of the tenant that he would suffer greater hardship."*

10. The question about maintainability of a writ petition under Article 226 read with Article 227 of the Constitution of India against a finding of fact was considered by this Court in ***Mohd. Shafi v.***

***Additional District and Sessions Judge (VII), Allahabad and others, (1977) 2 SCC 226*.** In the said case this Court held that in the case of mixed question of law and fact if the High Court found that on a wrong interpretation of the explanation the matter has been decided, the High Court can correct the error and set aside the conclusion reached by the Subordinate Court.

11. It is well settled that the High Court under Article 227 of the Constitution of India has jurisdiction to correct the error if apparent on the face of the record. But in the present case the respondents failed to bring on record as to what was the error committed by the District Judge in deciding the appeal. The claim of the appellant to use the premises for personal necessity is a question of fact which was decided by the District Judge on appreciation of evidence. There was no mixed question of law and fact involved in the case, much less question of law. The comparative hardship of tenant and landlord is a question of fact. In absence of any question of law involved with such facts, the High Court can not alter such finding under Articles 226 and 227 of the Constitution of India.

12. In view of the aforesaid finding, we hold that the High Court had no jurisdiction under Articles 226 and 227 of the Constitution

of India to interfere with or alter a finding of fact arrived at by an Appellate Court deciding the question of personal necessity of a landlord in a landlord-tenant dispute. For the reason aforesaid, the judgment passed by the High Court cannot be upheld. We, accordingly, set aside the impugned judgment and decree dated 23rd February, 2010 and 1st October, 2010, passed by the High Court and restore the order passed by the Appellate Court. The appeals are allowed.

………………………………………………………J.
(SUDHANSU JYOTI MUKHOPADHAYA)

………………………………………………………J.
(KURIAN JOSEPH)

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NEW DELHI,
APRIL 1, 2014.