

# SUPREME COURT OF INDIA

Narendra S. Chavan

Vs.

Vaishali V. Bhadekar

C.A.No.3371 of 2003

(Markandey Katju and V.S. Sirpurkar JJ.)

21.07.2009

## ORDER

1. This appeal by special leave is directed against the judgment and order dated 17.8.2002 of the Division Bench of the High Court of Bombay whereby the Letters Patent Appeal filed by the respondent-tenant was allowed. The respondent-tenant after losing before the rent control appellate authority had filed a writ petition, which writ petition also came to be dismissed by order dated 13.3.2002 for non-prosecution and the civil application filed for restoration of the same was also dismissed by order dated 14.6.2002. Thereafter possession was given to the appellants. Instead of challenging the order dated 14.6.2002 before a proper court the respondent-tenant filed a Letters Patent Appeal before the Division Bench. The said Letters Patent Appeal was allowed and while allowing the same, the Division Bench even set aside the orders passed by the rent control appellate authority on merits.

2. The learned counsel appearing on behalf of the appellants-landlord herein contends that everything was without jurisdiction. We entirely agree. In fact, after the dismissal of the restoration application by the learned Single Judge, no Letters Patent Appeal could have been filed against that order because that was not a judgment. This is apart from the fact that even assuming that a Letters Patent Appeal was maintainable, there was no justification for the Division Bench to go straight into the merits of the matter and all that the Division Bench could have done was to send back the matter to the Single Judge for being decided on merits. That was not done. Instead, the Division Bench went into the merits of the matter. It is stated that this course was adopted because the parties agreed that the writ petition should be restored to file and should be heard and disposed of on merits. We do not understand as to how the Division Bench had the jurisdiction under Clause XV of the Letters Patent because even if the matter was decided by the Single Judge then the Division Bench would not have had the jurisdiction to decide the matter on merits. Consent does not confer jurisdiction. In that view of the matter, we allow this appeal and set aside the impugned judgment and order of the Division Bench but without any order as to the costs.