

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

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915 CIVIL REVISION APPLICATION NO. 143 OF 2014
WITH CA/5080/2014 IN CIVIL REVISION APPLICATION/143/2014
WITH CA/5143/2014 IN CIVIL REVISION APPLICATION/143/2014

RANJIT UTTAMRAO PATIL
VERSUS
ANIL TUKARAM THORAT

...

Advocate for Petitioner : Mr. Adwant S.V. & Mr. Nagarkar
Avinash M.,
Advocate for Respondents : Mr.P.D. Shendurnikar,

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CORAM : S. V. GANGAPURWALA, J.

DATE : 21st October, 2015

PER COURT :

1. The present petitioner is tenant and the respondent is landlord. The petitioner filed suit for injunction against the land lord, restraining landlord from evicting the petitioner without due process of law or from dispossessing the plaintiff/tenant without following due process of law.

2. The present respondent appeared pursuant to the suit summons and filed counter claim, seeking recovery of arrears of rent and possession of the suit property on the ground of *bona fide* requirement. The trial court decreed the counter claim, directing the present petitioner tenant to handover vacant possession of the

suit premises to the present respondents and dismissed the suit of the present petitioner. The petitioner filed an appeal before the District Court. The District Court dismissed the appeal, confirming the judgment and decree of the trial court. The tenant has assailed the said concurrent findings in the present revision.

3. Mr. Adwant, the learned counsel for the petitioner strenuously contends that proper opportunity ought to be given to the petitioner. The decree is an *ex-parte* decree. The petitioner/tenant has filed his written statement to the counterclaim of the defendant, however, the tenant could not adduce evidence and the suit has been decided in absence of the evidence of the present petitioner. Opportunity needs to be given to the petitioner to contest the claim of the respondent.

4. The learned counsel further submits that the court has not adhered to the provisions of substantive law as well as procedural law. While passing decree for eviction in the counter claim, the court has failed to consider section 15(2) of the Maharashtra Rent Act i.e. no decree for eviction can be passed on the ground of default until and unless notice requiring the tenant to pay rent within 90 days is issued to the tenant. No notice has been

issued to the tenant demanding recovery of arrears of rent. According to learned counsel, the tenant has given deposit of Rupees one lakh. The same ought to have been considered.

5. Learned counsel further submits that while allowing the counterclaim on the ground of *bona fide* requirement, provisions of section 16(1)(g) read with section 16(2) have not been adhered. Section 16(1)(g) requires landlord to prove a reasonable and *bona fide* need of the suit premises. There are various properties in name of relatives of the land lord. It is only with a view to harass the present petitioner, the counterclaim is filed.

6. Learned counsel submits that section 16(2) of the Rent Act has not be considered at all. The trial Court has not even framed issues with regard to hardship. It is an obligation cast upon the court to consider the hardship even if landlord proves *bona fide* requirement. It is only when the court is satisfied that no hardship would be caused to the tenant, if decree of eviction is passed then only the court can direct the eviction on the ground of *bona fide* requirement.

7. According to the learned counsel, the pleadings in the written statement have not been considered. When the

claim of the landlord has been denied by the tenant in the written statement, burden is cast upon the landlord to prove its case. The landlord is not absolved of his obligation to prove his case. According to learned counsel, the appellate court has also failed to comply the requirement of Order 41 Rule 31 of the Civil Procedure Code. Independent finding on each and every point for determination has to be given. Failure to give independent finding on the points for determination would vitiate the judgment. On this count also, the judgment passed by the appellate court deserves to be set aside.

8. Mr. Shendurnikar, the learned counsel for the respondents submits that the conduct of the present petitioner is taken note of even by the trial court. The trial Court, vide order below Exh.1 on 11th March, 2011 had observed that though the affidavit of examination in chief of plaintiff is filed at Exh.48, but after part cross examination, inspite of giving four opportunities, the plaintiff did not make himself available for cross examination and thereafter struck down his evidence. The suit proceeded thereafter. The said order was passed on 11th March, 2011. After one year the said suit was decided i.e. on 13th March, 2012. Till that time, the petitioner, it appears, has not participated in the

proceeding. No plausible reason is forth coming for not participating in the proceeding. The present petitioner is in possession of the suit premises. It is the present petitioner who would gain by delaying the proceeding. The defendant also led his evidence. The plaintiff did not cross examine the defendant nor has shown his willingness to cross examine the defendant by filing an application. After giving ample opportunity to the present petitioner, the court finally decided the suit. The appellate court has also considered that the conduct of the petitioner dis-entitles the petitioner from any equitable order.

9. As far as merits of the matter is concerned, the petitioner has filed written statement to the counter claim. Of course, no notice has been issued by the landlord demanding payment of rent as required under section 15 (2) of the Rent Act. As such, the ground for default cannot be considered for eviction in absence of notice as required under section 15(2) of the Rent Act. However, the ground of *bona fide* requirement as pleaded by the landlord can be considered.

10. The landlord has pleaded and has led evidence to show that he has been transferred to Aurangabad. After

transfer to Aurangabad, he has no other residential premises at Aurangabad and he has to reside in a rented premise. The tenant has not brought on record any other premises owned by the landlord nor has controverted the said statement of the landlord. In absence of any evidence to the contrary, the case of the landlord has been believed by both the courts. Even the tenant did not file any application for adducing evidence before the appellate court to show that the landlord has any other residential premises in his occupation. In absence of any other premises for the landlord to reside, the fact that the landlord is residing in rented premises after having been transferred to Aurangabad is sufficient to hold the reasonable and bona fide need of the landlord.

11. As far as hardship is concerned, the tenant has nowhere pleaded that he would suffer greater hardship if decree of eviction is passed. Nonetheless, even if the said aspect of hardship is considered, the landlord who is the owner of the suit property is required to reside in a rented premises. After filing of the counterclaim, the tenant has nowhere searched for any other premises for himself. Naturally, when the landlord is residing in a tenanted premises after having been transferred to

Aurangabad, hardship would be caused more to the landlord if the decree of eviction is refused.

12. The Court has also decreed the claim for recovery of arrears of rent i.e. up to the date of filing of counter-claim, claim for arrears of Rs.90,000/- is decreed. The said decree is passed on 23.08.2011, directing the tenant to deposit arrears of rent amount for 21 months i.e. for a period commencing the date of filing of suit till July, 2011 and the tenant was further permitted to deposit monthly rent from the month of August, 2011 in the Court. As such, even as on the date of decree passed in the year 2011, more than 1,89,000 rent was due against the tenant. It has been observed that as per the agreement, the tenant had given deposit of Rs.50,000/-. It is submitted that the tenant has, till date, deposited an amount of Rs.1,28,000/- i.e. Rs. 1,00,000/- after orders passed by this Court and Rs.28,000/- before the Courts below. Agreed rent is Rs.9000/- per month. There is nothing on record to show that apart from the said amount, the tenant has deposited any other amount. The rent outstanding would be more than Rs.7 lakhs even if the amount of Rs.50000/- deposit is adjusted. The said amount is also not deposited by the tenant. The conduct of the tenant does not appear to be proper and *bona fide*.

13. Considering aforesaid conspectus of the matter, the revision application is dismissed, however with no order as to cost.

14. Mr. Advant the learned counsel seeks continuation of the interim order for a further period of six weeks. Mr. Shendurnikar opposes the said request. However, considering the fact that the interim relief was in force, the said interim order is extended for a further period of four weeks from today. Needless to state that on lapse of four weeks, the present protection granted shall come to an end.

15. The landlord is permitted to withdraw the amount deposited by the tenant pursuant to the orders of this Court.

(S. V. GANGAPURWALA, J.)

JPC