

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.95 OF 2015

Sudesh Krishnarao Dhandale.] ... Applicant

Versus

1. Madhukar Krishnaji Kalekar.]
 2. Shamrao Jagannath Haval.] ... Respondents

Mr. Rahul P. Walvekar for Applicant.
 Mr. Abhijit M. Adagule for Respondents.

CORAM :- M. S. SONAK, J.
DATE :- AUGUST 21, 2015

P. C. :-

1. The Applicant challenges Judgments and Decrees dated 01/01/2013 and 11/12/2014 made by the Trial Court and the Appeal Court ordering his eviction from the suit premises on the ground of default in payment of rent as also reasonable and *bona fide* requirement of the Respondents-landlords.

2. Mr. Rahul P. Walvekar, learned Counsel for Applicant, by reference to certain paras of the plaint, submitted that in this case, the Respondents-landlords have denied that the Applicant was a tenant in respect of the suit premises. Mr. Walvekar submits that in such

circumstances, suit for eviction of the Applicant was not at all maintainable under the provisions of The Maharashtra Rent Control Act, 1999 ('Rent Act') and the eviction decrees made by the two Courts are in excess of jurisdiction. That apart, Mr. Walvekar submitted that the findings of fact recorded by the two Courts are vitiated by perversity and this is also a ground for interference with the impugned Decrees, under Section 115 of the CPC.

3. Having heard the learned Counsel for parties and perused the record, there is no reason to interfere with the impugned Judgments and Decrees. In the first place, it is to be noted that the Applicant neither filed any Written Statement nor adduced any oral/documentary evidence in the matter. The two Courts, have recorded concurrent findings of fact, both on the aspect of default in payment of rent as well as reasonable and *bona fide* requirement of the Respondents-landlords. The Applicant, has admitted the receipt of statutory notice demanding arrears. However, the record indicates that such arrears were not cleared. Thereafter, the Applicant also failed to deposit the rent within 90 days from the date of service of summons before the Trial Court. Since neither any Written Statement was filed nor any evidence was adduced, the two Courts, relying upon not just a pleading, but the oral and documentary evidence adduced by the Respondents-landlords, have recorded findings of fact on the aspect of default in payment of rent. There is no perversity whatsoever in the record of such findings of fact.

4. Similarly, on the aspect of reasonable and *bona fide* requirement, the two Courts have rightly held in favour of the Respondents-landlords. The two Courts have made reference to the number of family members of the Respondents-landlords and discussed the need of the landlords in the context of the suit premises. The issue of comparative hardship has also been considered. In fact, the two Courts have concurrently recorded findings of fact that the Applicant has acquired alternate premises at Survey No.54/1, Plot No.2, Mouje Pachgaon, Tal. Karveer and therefore the issue of comparative hardship is required to be answered in favour of the Respondents-landlords. Again, the finding of fact is amply borne by the material on record and there is no perversity whatsoever involved.

5. In para 2 of the plaint, there is reference to the Applicant not, in reality, being a tenant of the suit premises. However, in the rest part of the plaint, there are pleadings which indicate that the Respondents-landlords have, accepted the Applicant as a tenant in respect of the suit premises. In fact, it is undisputed that notices came to be issued to the Applicant and the suit instituted on the ground have for recovery of possession under the Rent Act. Very clearly, the Respondents-landlords have proceeded on the basis that the Applicant was the tenant in respect of the suit premises. In such circumstances, there is no scope to hold that the suit itself was not maintainable. Ultimately, the averments in the plaint have to be read and construed in their entirety. The averments in para 2 of the plaint, at the highest, can be held to be one of the contentions of the Respondents-landlords.

Ultimately, such contention was never pursued by the Respondents-landlords. That apart, as noted earlier, even the Applicant did not file any Written Statement despite opportunities having been granted for filing of the same. Only after the Respondents-landlords amended the plaint, introducing the averments in the context of acquisition of alternate accommodation at Pachgaon, did the Applicant file the Written Statement in response to the amended portion of the plaint. In these circumstances, it is not possible to accept the Applicant's contention that the suit was itself not maintainable.

6. This Court, in exercise of its revisional jurisdiction under Section 115 of the CPC, does not exercise the appellate jurisdiction. Accordingly, it is not for this Court to re-appreciate the material on record with a view to interfere with findings of fact. In the present case, as noted earlier, the findings of fact are supported by the material on record. The Applicant chose not to adduce any oral evidence in the mater. The Applicant did not even file the Written Statement initially. The Written Statement in response to the amendment, merely denies acquisition of the alternate accommodation. However, upon oral as well as documentary evidence, the two Courts have held against the Applicant. There is no error or jurisdiction nor is this a case where the two Courts have acted illegally or with material irregularity. Accordingly, no case is made out to interfere with the impugned Judgments and Decrees in exercise of revisional jurisdiction under Section 115 of the CPC. Civil Revision Application is dismissed. There shall be no order as to costs.

7. The learned Counsel for Applicant prays for some reasonable time of six months to enable the Applicant to vacate the suit premises. The learned Counsel for Respondents-landlords points out that the Applicant is not residing in the suit premises. Accordingly, time of two months is granted to the Applicant to vacate and hand over peaceful and vacant possession of the suit premises to the Respondents-landlords. It shall, however, be subject to the Applicant filing within two weeks from today the usual undertaking along copy of the same to the learned Counsel for Respondent-landlord. In case such undertaking is not filed within two weeks from today, the Respondents-landlords will be entitled to execute the eviction decree.

(M. S. SONAK, J.)