

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION (STAMP) NO.5252 OF 2015

Mrs. Prabha Babu Zaidi.] ... Applicant

Versus

Mr. Lekhraj Meghji Solanki and Ors.] ... Respondents

Mr. Mayur Khandeparkar a/w Ms. Ambrin Khan i/b Mr. Omar K. Shaikh for Applicant.

Mr. M. V. Limaye a/w M. S. Lagu for Respondent Nos.1 and 2.

CORAM :- M. S. SONAK, J.

DATE :- SEPTEMBER 22, 2015

P. C. :-

1. This Civil Revision Application challenges orders dated 31/07/2009 and 06/09/2014 made by the Trial Court and the Appeal Court ordering eviction of the Applicant under Section 13 (1)(i) of The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ('Rent Act').

2. It is pertinent to note, at the outset, that similar decrees were made against 48 tenants having structures in the suit property. The Civil Revision Application in respect of such 48 decrees have since been dismissed by this Court, *inter alia*, by detailed Judgment and Order dated 14/02/2014. The Hon'ble Apex Court, by its order dated

11/07/2014, dismissed the Special Leave Petitions. The order made by the Hon'ble Apex Court on 11/07/2014 reads thus :-

“Heard. We find no merit in these Special Leave Petitions. The Special Leave Petitions are, accordingly, dismissed.

However, on the request of the learned counsel for the petitioners, we allow the petitioners further period upto 31st March, 2015 to vacate their respective premises subject to outcome of the pending writ petitions, if any, and filing of usual undertaking within four weeks and following conditions :-

- (i) Petitioners shall pay arrears of rent within two months, if any, in favour of respondents and deposit the amount in the account of the respondents, number of which may be provided by the respondents or by way of bank draft;*
- (ii) The petitioners will pay occupancy charges for the month of July, 2014 onwards on or before the 7th day of the subsequent month;*
- (iii) The petitioners shall not create any third party interest on the suit premises including that of their sons and relatives.*

On failure of any of the conditions it will be open to the respondents to move before this Court for initiating contempt proceedings against the petitioners.”

3. In this Civil Revision Application, Mr. Khandeparkar has raised the following contentions :-

- (a) That the two Courts have not adverted to the provisions contained in Section 13 (3) of the Rent Act which mandate that an eviction decree under Section 13 (1)(i) of the Rent Act can be made only in respect of part of the premises, which, in the opinion of the Court, is necessary to vacate for carrying out the work of repairs or erection.
- (b) That the allegations in the plaint, at least qua the Applicant (Original Defendant No.2), were that the Applicant was an illegal occupant in respect of the suit premises. If this be so, then no suit as against the Applicant was at all maintainable before the Small Causes Court under the provisions of the Rent Act.
- (c) The findings on the aspect of tenancy of the Applicant and other Defendants are vitiated by perversity. There is a marked variance between the findings recorded by the Trial Court and the Appeal Court on this crucial aspect.
- (d) Finally, the property whereon the suit premises are located, has been declared as a '*slum area*' under the provisions of Section 4 of The Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 ('Slum Act'). This aspect is relevant not just in the context of provisions contained in Section 22 of the Slum Act but also in the context of the *bona fides* of the landlord's

requirement. It is submitted that once property is declared as slum area, the occupants statutorily acquire the right to be rehabilitated and this statutory right eclipses the so called '*bona fides* of the landlord's requirement'.

4. As noted earlier, in respect of 48 occupants from out of the property wherein suit premises are located, eviction decrees have been made and such decrees have been upheld right up to the Hon'ble Apex Court. This Court, in its Judgment and Order dated 14/02/2014 has considered, *inter alia*, the contention with regard to the provisions contained in Section 13 (3) of the Rent Act. In this case, it is not correct that the two Courts have not adverted to the provisions of Section 13 (3) of the Rent Act or not considered the impact thereof to the facts and circumstances of the present case. In any case, almost 48 out of the total 51 occupants have been ordered to be evicted and there is no substance in the contention that the construction/erection will not be affected if the suit premises are permitted to continue in the position in which they are.

5. On the aspect of non-maintainability of proceedings under the Rent Act, it must be noted that the pleadings are to be read and construed in their entirety. Besides, in the present case, it is not the case of the Applicant that he was not a tenant in respect of the suit premises. Certain averments may have referred to the Applicant as being an unlawful occupant. However, it is to be noted that the suit

was instituted against the Applicant's brother as well. Besides, the Appeal Court has held that it was the mother of the two Defendants who was the tenant in respect of the suit premises and the Defendant No.2 (the Applicant) was residing with his mother at the time of her demise and consequently, the suit was maintainable as against the Applicant as well. There is certainly no perversity in such findings recorded by the two Courts.

6. On the aspect of declaration as slum area, admittedly, reliance is placed upon the declaration dated 27/03/2015. The declaration is, in fact, after the two decrees were passed by the Trial Court and the Appeal Court. Such declaration does not affect the *bona fides* of requirement but may, at the highest, be relevant in the context of executability of the decree of eviction in terms of Section 22 of the Slum Act. This is, however, not an issue which arises in the present Civil Revision Application and therefore no opinion is expressed upon the said aspect.

7. Suffice to note that there are concurrent findings of fact recorded by the two Courts in the context of ground for eviction under Section 13 (1)(i) of the Rent Act. It is not demonstrated that the findings of fact are vitiated by any perversity or non-application of mind. Similar decrees in respect of almost 48 other occupants have been made and upheld by this Court as well as the Hon'ble Apex Court. In these circumstances, no case is made out to interfere with the impugned decrees concurrently made by the two Courts.

8. Civil Revision Application is accordingly dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Order.