

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.32 OF 2014

Vividh Pharmaceuticals Pvt. Ltd.] ... Applicant

Versus

Nilopher Nadir Reporter.] ... Respondent

Mr. P. S. Dani, Senior Advocate, a/w Mr. Dhiraj Mhatre i/b Desai Diwanji for Applicant.

Mr. P. K. Dhakephalkar, Senior Advocate, i/b Jaydeep Deo for Respondent.

CORAM :- M. S. SONAK, J.

Judgment Reserved on :- JULY 13, 2015
Judgment Pronounced on :- JULY 16, 2015

JUDGMENT :-

1. This Civil Revision Application challenges the Judgment and Decree dated 21/11/2009 made by the Small Causes Court at Mumbai ('Trial Court') and the Judgment and Decree dated 04/09/2013 made by the Appellate Bench of the Small Causes Court at Mumbai (Appeal Court), both of which, directed the eviction of the Applicant from the suit premises on the ground that the suit premises are required by the Respondent-landlord reasonably and *bona fide*.

2. Mr. Dani, learned Senior Advocate for Applicant, made the following submissions in respect of the Civil Revision Application :

- (a) That the findings of fact as to *bona fide* requirement recorded by the two Courts are vitiated by perversity, inasmuch as, relevant material has been excluded from consideration.
- (b) The eviction was applied for on the ground that the suit premises are located in the building where the Respondent's brother also resides and consequently, it was said that the suit premises were better suited to the needs of the Respondent. Upon the sale of the premises owned by the Respondent's brother, such reason/ ground did not survive and no decree of eviction could, therefore, have been made upon such ground.
- (c) There is material on record that the parties were negotiating the sale/purchase of the suit premises. The eviction proceeding came to be instituted in order to exert undue pressure upon the Applicant, in the matter of purchase price. Accordingly, it was submitted that the requirement of the Respondent is neither reasonable nor *bona fide*.
- (d) The Applicant's application seeking leave to adduce additional evidence and remand for the said purpose was incorrectly rejected by the Appeal Court.
- (e) There is total failure on the part of two Courts to comply with the obligation cast upon the Court by the provisions contained in Section 13(2) of the Bombay Rents, Hotel and Lodging and Rates Control Act, 1947 ('said Act'). In particular, it was pointed out that the suit premises admeasure around 2000

sq.ft. and therefore, it was obligatory upon the two Courts to consider whether eviction from part of the suit premises would be commensurate with the alleged need expressed by the Respondent. Such non-consideration constitutes failure to exercise jurisdiction.

3. On the other hand, Mr. Dhakephalkar, learned Senior Advocate for Respondent, submitted that there is no perversity whatsoever in the findings of fact concurrently recorded by the two Courts. The two Courts have not only applied the correct principles in the matter of determination of reasonable and *bona fide* need of the Respondent, but further, correctly assessed the material on record. The two Courts, in compliance with the mandate of Section 13(2) of the said Act, have addressed themselves to the issue of comparative hardship and were also alive to the issue of partial eviction. Besides, Mr. Dhakephalkar submitted that the conduct of the Applicant in the present matter is such, as would disentitle the Applicant to any hearing on the merits. He submitted that the Applicants have obtained ad-interim relief in November 2013 on basis of the assurance that they would clear arrears of rent/compensation, which by now have mounted to Rs.36,00,000/- (Rupees Thirty Six Lacs Only), but despite availing several opportunities, they failed to clear the same. For all these reasons, Mr. Dhakephalkar submitted that this Revision Application be dismissed.

4. The rival contentions now fall for my determination.

5. There is no case made out to exercise revisional jurisdiction. The two Courts have recorded concurrent findings of fact that the suit premises are required reasonably and *bona fide* by the Respondent. The

findings of fact are borne from the material on record. There is no exclusion of any relevant material. This is not a case where any incorrect tests or principles have been employed by the two Courts. The Applicant was unable to demonstrate any perversity in the findings of fact, concurrently recorded by the two Courts.

6. The reason that suit premises were more convenient because Respondent's brother had premises in the same building, was only one of the several reasons stated by the Respondent in her application seeking eviction. In fact, the main ground pleaded is that Respondent's son, an employee with the IBM, had attained majority and desired to marry and live independently with his wife at the suit premises. There is overwhelming evidence on record, which establishes this ground. Both the Courts have held that the Respondent, together with her major son, presently reside in tenanted premises which admeasure about 1400 sq.ft. and that they require the suit premises admeasuring about 2000 sq.ft., which are their own, so that the Respondent and her son are able to live independently in two separate premises. The material on record does establish the different lifestyles to which the Respondent and her son are used to and consequent need of separate residences. The two Courts, have made reference to several aspects which arise out of the materials on record and have recorded findings of fact that the need of the Respondent is indeed reasonable and *bona fide*. As noted earlier, there is no perversity involved in the findings of fact recorded concurrently by the two Courts.

7. In fact, if the cross-examination of the Respondent and her witness (son) is perused, it transpires that there is no serious challenge to the deposition as to reasonableness and *bona fide* of the requirement. The

two Courts have noted this aspect. In the light of absence of any serious challenge to this vital aspect in the course of cross-examination, there is no reason to interfere with the concurrent findings of fact recorded by the two Courts on this aspect.

8. There is no merit in the submission that the eviction proceedings were initiated to exert any pressure upon the Applicant. Sometime in the year 1996, there is reference to some correspondence in the context of sale of the suit premises. The suit for eviction, however, came to be instituted in the year 2005. The Respondent had leased the suit premises to the Applicant sometime in the year 1974 and the term of the lease was meant to be 30 years. The term expired in the year 2004. Based therefore, upon some correspondence of the year 1996, it can hardly be suggested that the eviction proceedings initiated in the year 2005 were intended to exert any pressure as alleged, or otherwise.

9. The Applicant application seeking leave to adduce additional evidence at the appeal stage has been duly considered and rejected by the Appeal Court. In the application, the Applicant has made allegations against its own Lawyers, in the matter of non-production of certain materials, despite instructions to do so. Remand is applied for, *inter alia* on the ground that there was no cross-examination in the context of reasonable and *bona fide* need deposed to by the respondent and her witness. The lacunae in cross-examination cannot be plugged by seeking a remand from the Appeal Court and that too on the basis of vague and unsubstantiated allegations against own Lawyers. The same applies to production of material at the appeal stage. The record, even otherwise indicates that the Applicant has been represented by the Solicitor Firms from time to time.

The Applicant has been represented by such Firms at every stage of litigation. In such circumstances, the reasons set out in the application were rightly not accepted by the Appeal Court. The so called additional evidence was not at all necessary for the purposes of deciding the appeal. On the basis of material on record, it was sufficient for the Appeal Court to uphold the finding of *bona fide* and reasonable need of the respondent. The reasons set out by the Applicant in the application seeking leave to adduce additional evidence were not at all convincing and do not inspire any confidence.

10. The Trial Court as well as the Appeal Court has adverted to the aspect of comparative hardship as enjoined by Section 13(2) of the said Act in its proper perspective. This Section provides that where the Court is satisfied that no hardship would be caused either to the tenant or to the landlord by passing a decree in respect of part of the premises, the Court shall pass a decree in respect of such part only. The contention that decree should have been made only in respect of part of the suit premises, was significantly never raised by the Applicant either before the Trial Court or the Appeal Court. The contention involves a mixed issue of law and fact and therefore, in absence of the Applicant having raised same even at stage of appeal, normally, the Applicant should not be permitted to raise the same in this Civil Revision Application. However, Mr. Dani, learned Senior Advocate for the Applicant was permitted to make submissions upon such contention.

11. Even if it is held that there is an obligation upon the Court to advert to the issue of partial eviction, in the facts and circumstances of the present case, it cannot be said that the two Courts were not alive to the

position as contemplated by Section 13(2) of the said Act. Admittedly, the suit premises is a residential apartment. There is no material on record that such residential apartment can be split up into two and that the local authorities will permit such splitting up of the residential apartment into two. That apart, the respondent's need in the present case has arisen, on account of her son's need to use the suit premises after marriage. In such circumstances, to require the respondent's son to reside with his wife in some truncated portion of the suit premises, would hardly be reasonable in the facts and circumstances of the present case. This is not a case where some poor tenant is being evicted from the suit premises.

12. The material on record establishes that the suit premises are being used for the residence of Director Balkrishnan and his wife. The record indicates that whilst the Applicant company is financially faltering, other companies, including in particular the company M/s. Devidayal Plastics Private Limited of which Mr. Balkrishnan and his wife are again only Directors, is financially prospering. There is record to indicate that the rents and other outgoings in respect of suit premises, have from time to time, being paid by the M/s. Devidayal Plastic Private Limited. Both the Courts have addressed themselves to the issue of comparative hardship and implicitly issue arising of the provisions contained in Section 13(2) of the said Act in their proper perspective and there is neither any perversity nor any jurisdictional error involved. There is, accordingly, no substance in the plea based upon partial eviction or non-consideration of the provisions contained in Section 13 (2) of the said Act.

13. In the exercise of revisional jurisdiction, it is not for this Court to re-appreciate the material on record, as if it were an Appellate Court and

to interfere with concurrent findings of fact recorded by the two Courts, unless it was demonstrated that such findings of fact are perverse or vitiated by non-application of mind. When findings of facts recorded by the Courts are supportable on the evidence on record, the Revisional Court must, indeed, be reluctant to embark upon an independent reassessment of the evidence and the supplant a conclusion of its own, so long as the evidence on record admitted of and supported the one reached by the Courts below^{1 & 2}.

14. The conduct of the Applicant also leaves a lot to be desired. The Applicant was granted interim reliefs in Appeal Court subject to deposit of reasonable compensation at the rate of Rs.1,50,000/- per month. Consequent upon dismissal of the Applicant's appeal on 04/09/2013, the Applicant obtained ad-interim orders from this Court some time in November 2013. This was subject to assurance tendered by and on behalf of the Applicant that all arrears towards rent/compensation will be deposited in the Court. In fact, such statement was even recorded in the order dated 14/10/2014. Thereafter also, time was applied by the Applicant to deposit such arrears. The record, however, indicates that the Applicant failed to deposit the arrears. From November 2013 onwards, the Applicant has enjoyed the benefits of interim reliefs, subject to condition that the arrears will be cleared and further, the Applicant to continues deposit amount of Rs.1,50,000/- per month. As of now, the arrears have mounted up to almost Rs.36 Lacs. Even at the stage of hearing of this Civil Revision Application, the matter was adjourned to enable the Applicant to make a statement as to whether such amount would be deposited. On 13/07/2015, learned Senior Advocate for the Applicant, however, stated

1 N. Eswari w/o. Adinarayana vs. K. Swarjya Lakshmi w/o. K.V.L.N.A. Sastry - (2009) 9 SCC 687

2 Rajbir Kaur vs. S. Chokesiri & Co. - (1989) 1 SCC 19

that the Applicant is not in a position to deposit the amounts and that the matter would be argued finally.

15. The aforesaid indicates that the Applicant obtained ad-interim order from this Court in November 2013 based upon the condition of deposit of compensation. The Applicant, on the basis of this conditional ad-interim order, continued in possession of the suit premises for almost two years, despite two orders directing its eviction therefrom. After the lapse of almost two years, despite assurance of compliance, the Applicant has declined to deposit the compensation. Such conduct on the part of the Applicant does not entitle the Applicant to any equitable relief from this Court. In fact, Mr. Dhakephalkar, learned Senior Advocate for the Respondent had urged that the Applicant be denied opportunity of hearing on merits, for failure to comply with the directions of this Court. Though, full opportunity of hearing has been afforded to the Applicant, such conduct of the Applicant calls for imposition of exemplary costs.

16. Therefore, in the light of the aforesaid facts and circumstances as also the law on subject, there is no case made out to interfere with the concurrent findings of fact recorded by the two Courts. Accordingly, Civil Revision Application is dismissed with costs assessed at Rs.1,00,000/- (Rs. One Lac only).

(M. S. SONAK, J.)

17. At this stage, the learned counsel for the Applicant seeks for continuation of interim relief for a period of four weeks from today. The conduct of the Applicant, in the matter of obtaining ad interim relief based

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upon assurances that compensation would be deposited in this Court has already been highlighted in paragraph 14 of this judgment and order. However, since the learned counsel for the Applicant states that the Applicant seeks to take recourse against the judgment and order, the interim relief is extended for a period of four weeks, subject to the condition that the Applicant files the usual undertaking and further, deposits compensation at the rate of Rs.1,50,000/- per month from November 2013 till date. Accordingly, the interim relief shall continue for a period of four weeks, if the Applicant complies with the aforesaid conditions within a period of one week from today.

(M. S. SONAK, J.)