

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11554 OF 2014

Atul Krishnalal Bhagwati & Anr.)... Petitioners
V/s.
Shailesh Rajnikant Parikh)... Respondent

Mr.Kevic Setalvad, Sr.Advocate i/by Mr.Tyabji Dayabhai for the petitioners.

Mr.Zal Andhyanjina Advocate a/w Mr.S.V.Mehta i/by M/s.Malvi Ranchoddas & Co. for the respondent.

CORAM: K.R.SHRIRAM, J.

DATE OF RESERVED : 07.01.2015.

DATE OF PRONOUNCEMENT :13.01.2015

P.C. :

1 With the consent of the parties, rule made returnable forthwith and the petition is taken up for hearing.

2 This writ petition filed under Article 227 of the Constitution of India is against an interim order passed by the trial Court. The interim order passed is permitting the petitioners to deposit the standard rent as calculated by the petitioners towards arrears and future rent and for permitting the respondent to withdraw the same.

3 The facts of the case as it appears are atypical. The suit

property is a plot of land with a ground plus 2 storied bungalow on it in an expensive area of Mumbai. The property was owned by 3 persons (1) Siddharth Ramanlal Parikh (Siddharth) (2) Shailesh Rajnikant Parikh i.e., the respondent herein (Shailesh or Respondent) and (3) Girish Chimanlal Parikh (Girish). All the three were co-owners of the property. Between the 3 owners they had agreed, in case any of them wants to sell their rights in the property, the other 2 co-owners had the first right of refusal. Siddharth was occupying the ground floor, Shailesh first floor and Girish the second floor.

It is the case of the petitioners that Siddharth put the petitioners as tenants with the permission of Shailesh & Girish pursuant to a writing dated 16.10.1980 and on the same date Shailesh and Girish also gave in writing, permission to Siddharth to sell the ground floor premises to the petitioners. Pursuant thereto since October-1980 or so, the petitioners have been in occupation and possession of the ground floor of the suit building.

4 On or about 21.5.1984 Siddharth agreed to assign to Shailesh and Girish his rights in the property. It is not clear why he did that when it is the case of the petitioners that Siddharth had agreed to sell the ground floor to the petitioners. This assignment was terminated by Siddharth on 17.4.1994. In the meanwhile, on 27.4.1989 Siddharth also obtained permission from the Collector to assign the premises in favour of the petitioners. By a registered deed of assignment dated 23.1.2004, Siddharth assigned the ownership rights of his share in the property in favour of the petitioners.

There are some loose ends on facts, but I am not paying much attention to that as they are not ready material to the present petition.

In 2005, Girish filed a suit in this Court for cancellation of deed of assignment dated 23.1.2004 in which Shailesh is also a defendant. Shailesh with the written statement has also filed a counter claim, in effect supporting Girish.

5 In 2009, respondent-Shailesh filed a suit under the Rent Act in Small Causes Court, Mumbai against the petitioners for eviction due to non payment of rent. In the written statement filed by the petitioners, the petitioners have contended that there is no relationship of landlord and tenant between the petitioners and the respondent herein and the stand of the petitioners has been that they are the owners of 1/3rd un-divided share in the suit property including the suit premises and have right, title and interest in the same. In short, they claimed to be the co-owners having stepped into the shoes of Siddharth.

6 The basis of the suit filed by Shailesh/Respondent is that the respondent (org. plaintiff) had served a notice dated 29.6.2009 calling upon the defendants, i.e., petitioners herein, to pay the arrears of rent and the defendants, i.e., the petitioners herein not having paid the rent, the tenancy has been terminated.

7 Now comes the twist and the reason why it was said facts are a bit atypical. Despite the petitioners' stand that the entire ground floor with car parking in the suit premises was in exclusive use and possession of the petitioners, which they have purchased from one of the co-owners, viz., Siddharth and therefore are also co-owners, the petitioners took out an application under Section 15(3) of the Maharashtra Rent Control Act, 1999 offering, without prejudice to their rights and contentions taken in the written statement, to deposit in the trial court the entire amount equal to the alleged arrears of rent claimed by the respondent herein in the notice of demand dated 29.6.2009 and thereafter to continue to deposit the same pending the hearing and final disposal of the suit. The petitioners also were ready and willing to deposit their share of permitted increases as and when particulars were received by them from the respondent. The petitioners also prayed that the respondent should not be permitted to withdraw the amounts deposited by the petitioners in court and the same be invested in any nationalized bank subject to the final disposal of the suit. The monthly recurring rent is only Rs.1165.69 per month subject to the annual 4% increase as provided by Section 11(1) of the Maharashtra Rent Control Act, 1999.

8 The application of the petitioners to the extent of deposits of rent, came to be allowed. While allowing the application, the trial court also observed that if the petitioners are declared as co-owners as per their contentions, then it would be boundant upon the

plaintiff, viz., the respondent herein, to return back the amount received by him but the defendants having offered to pay in the capacity of tenant, the amount paid by the defendants can be adjusted in the final settlement of the dispute upon the merits. After saying so, the trial court also permitted the plaintiff, i.e., the respondent herein, liberty to withdraw the amount as and when paid by the defendants.

9 It is necessary to mention at this stage that the petitioners have been in occupation of the premises from on or about 16.10.1980 and were assigned rights in the property by Siddharth in January-2004 by a registered deed of assignment. The counsel for the petitioners also stated that upto January-2004, the petitioners were paying rent to Siddharth and thereafter, the question of paying rent to anybody did not arise as the petitioners themselves were co-owners. It is also an admitted position that the respondent has for the first time demanded rent only in June-2009 when he sent the demand notice.

The Division Bench of the Small Causes Court while disposing of the revision application found no infirmity in the trial court's order and dismissed the revision application. Aggrieved by that order, the petitioners have approached this court by way of this petition under Article 227 of the Constitution of India.

10 In this case the petitioners had offered to deposit the rent under Section 15(3) and the Court had allowed withdrawal of rent

under Section 15(4) of the Maharashtra Rent Control Act, 1999. While dealing with section 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, which provisions are similar to section 15 of the Maharashtra Rent Control Act 1999, the Apex court in the matter of ¹Ganpat Ladha Vs. Shashikant V.Shinde explained that the object of the provisions was not to deprive the landlord altogether of his rights in property but its object was also to make possible eviction of tenants if they failed to carry out their obligation to pay the rent to the landlord despite opportunity given in law in that behalf. It provides protection to the tenants on certain conditions and these conditions have to be strictly observed by the tenants who seek the benefits of the section.

11 The Division Bench of this Court in the matter of ²Chandiram Dariyanumal Ahuja Vs. Akola Zilla Shram Wahtuk Sahakari Sanstha, Akola has analyzed the provisions of section 15 of the Maharashtra Rent Control Act, 1999. Paragraph-9 of the said judgment reads as under :-

“9. The object of the Act is to protect such tenant who is ready and willing to pay the amount of rent (standard rent and permitted increases) and who observes and performs the other conditions of tenancy which are consistent with the provisions of the Act. The Act has made it mandatory for the landlord intending to sue the tenant on the ground of default in payment of rent to serve a pre-suit demand notice upon the tenant who may

1 1978(2) SCC 573

2 2013 (1) Mh L. J. 28

have remained in arrears of the rent (standard rent and permitted increases). The landlord intending to sue the tenant on the ground of arrears of rent has to serve such notice in the manner as prescribed in section 106 of the Transfer of Property Act and has to wait to file suit until expiry of 90 days from the date of service of such notice upon the tenant in writing or duly typed. Once the suit is instituted after compliance with section 15(2) and the suit summons is served upon the tenant, he gets additional opportunity in the Court which is limited to 90 days from the date of service of the suit summons upon the tenant to pay or tender the amount of rent in arrears plus simple interest at the rate of 15% p.a. in the court. The tenant must be vigilant thereafter also to continue paying the rent (including the permitted increases) till such suit is finally decided. The tenant shall also pay costs of the suit as directed by the Court. The protection-relief against forfeiture- which is available to the statutory tenant is not absolute but conditional depending upon the tenant paying or tendering the rent, interest and, costs of the suit in the Court as directed by the Court. The Court can exercise the discretion to pay the appropriate amount due, to the landlord out of the amount deposited in the Court by the tenant in such a suit. It is not out of place to discuss the relevant provision of the erstwhile Bombay Rent Act in the light of the judicial precedents concerning the default in payment of rental arrears by the tenant.”

(emphasis supplied).

Therefore, it is entirely the discretion of the Court to pay the appropriate amount due to the landlord out of the amount deposited in the Court by the tenant in the suit.

the amount by the trial court. The trial Court has exercised its discretion in allowing the plaintiff, i.e., the respondent herein to withdraw the amounts by observing that if the defendants, viz., the petitioners herein are declared as co-owners of the suit premises, then it will be binding upon the plaintiff, i.e., the respondent herein, to return back the amount received by him which the defendants, viz., the petitioners herein have offered to pay. It is also observed that the amount paid by the defendants can be adjusted in the final settlement of the disputes upon the merits.

13 It was the case of the petitioners that this was not a normal case of section 15. The counsel submitted that when it is the case of the petitioners that they were actually co-owners of the property and not a tenant and by way of only abundant caution that they offered to pay, the trial court should not have treated this as a normal section 15 proceedings and should not have exercised its discretion in allowing the respondent to withdraw the amount.

14 In the alternative, the counsel for the petitioners also submitted that the Court should have at the most allowed the respondent to withdraw only 1/3rd of the amount because it is the case of the petitioners that the respondent was owner of only 1/3rd share in the suit property.

The counsel for the respondent submitted that the orders passed are at inter locutory stage and does not suffer from any infirmity or perversity warranting interference by this Court.

15 The jurisdiction exercised under Article 227 is supervisory in nature. It is exercised when the subordinate court has assumed the jurisdiction which it did not have or has failed to exercise the jurisdiction though available in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby. The court may also step in and exercise its supervisory jurisdiction if there is an error which is manifest and apparent on the face of the proceedings and grave injustice or gross failure of justice has occasioned thereby. (¹Surya Dev Rai Vs. Ram Chander Rai & Ors.).

16 The order passed is at the inter locutory stage and has been passed without prejudice to the rights and contentions of the parties. The trial Court has also taken sufficient care to ensure that if the ownership of the petitioners is proved, the respondent would be bound to return the amount or the said amount would be adjusted in the final settlement of the disputes on the merits. I find no perversity or infirmity on this. The trial Court has exercised its discretionary powers and the same has been approved by the Appellate Revisional Authority.

17 At the same time, the Court ought to have considered that until 2009, when the petitioners have been in occupation of the premises since 1980, the defendant has not even made a demand for rent. The respondent had also given his concurrence to the

1 AIR 2003 SC 3044

petitioners occupying the suit premises. It is also the case of the petitioners that the respondent also is only having 1/3rd co-ownership rights in the suit property. Even if one takes the respondent's case even Girish is a co-owner. Therefore, at the most, the respondent could have been permitted to withdraw rent to the extent of 1/3rd of the amount being deposited by the petitioners.

18 In the circumstances, to that extent the order of the trial Court is modified. The respondent is permitted to withdraw 1/3rd of the rent deposited by the petitioners. The balance amount deposited to be invested in a nationalized bank by the registry of the Small Causes Court.

The petition accordingly stands disposed of.

(K.R.SHRIRAM, J.)

19 The counsel for the petitioners seeks stay of this order for a period of four weeks. Stay granted for a period of two weeks.

(K.R.SHRIRAM, J.)