

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

SECOND APPEAL NO.90/2014

Mr. Ashpak Rasool Bagwan & Anr. ... Appellants

V/s.

Mr. Abdul Gani Mohd Khan & Ors. ...Respondents

Mr. Satish Sudhakar Raut for the Appellants

CORAM : K. K. TATED, J.

DATE : SEPTEMBER 8, 2015

PC.:

1. Heard. This appeal is preferred by the Defendants challenging the concurrent findings of facts recorded by the courts below. The original Defendant No.1 expired during pendency of the suit. Hence, the appeal is filed on behalf of Defendant No.2.

2. Few facts of the matter are, as under:

The Plaintiff filed civil suit No.464/2002 in the court of Additional Small Causes Judge, Pune for possession of rental premises on the ground that the Defendants have committed default in payment of rent (section 15(2) of the Maharashtra Rent Control Act) and the suit premises required by the Plaintiff and their family members for their personal use and occupation (under section 16(1)(g) of the Maharashtra Rent Control Act).

3. When the Plaintiff called upon the Defendant to pay the arrears of rent, they failed and neglected to do so. The Plaintiff specifically stated in his deposition that they are 13 persons in their family and they have only 3 rooms, therefore, they required suit premises for their *bona fide* use and occupation. Though the Defendant duly served, Defendant failed to enter into witness box to justify his case. Considering the evidence on record, the Trial Court, by the impugned decree dated 21/02/2013 held that the Defendant failed and neglected to pay the arrears of rent within stipulated time from the date of notice dated 14/06/2001. The Trial Court also held that the Plaintiff required the suit premises for their *bona fide* use and occupation.

4. Being aggrieved by the decree dated 21/02/2013 passed by the Trial Court, the Defendant preferred civil appeal No.285/2013, wherein the Appellate Court framed following points for consideration:

	POINTS	DECISIONS
1	Whether the suit is maintainable ?	Yes
2	Did Plaintiffs prove that the Defendants have committed default in payment of rent ?	Yes
3	Did Plaintiffs prove that they required the suit premises for their personal use and occupation reasonably and bona fide?	Yes
4	Whether Plaintiffs are entitled for arrears of rent, notice charges and mesne profits ?	Yes
5	Whether the judgment and decree passed by the Learned Trial Court calls for intervention in this appeal ?	No
6	What order ?	As per final order

5. The Appellate Court also held that the Defendant failed to pay the arrears of rent within stipulated time. The Appellate Court further held that the Plaintiff requires suit premises for their *bona fide* use and occupation. Hence, the Appellate Court dismissed the civil appeal No.285/2013 filed by the Defendant.

6. Being aggrieved by the concurrent findings of facts recorded by the courts below, the Defendant preferred the Second Appeal.

7. The learned counsel for the Defendant submits that the courts below erred in not appreciating the fact that the co-owner Abdul Raheman Khan entered into development agreement dated 11/02/2006 with the developer Abdul Aziz Gafur Khan and had given development rights to the extent of his half share. These Defendants, in the development agreement were shown as tenant of the Abdul R. Khan. He submits that both the courts below failed to consider the fact that if the development agreement entered into by the owner/Plaintiff with a third party, then there is no question of arrears of rent and/or *bona fide* requirements of the Plaintiff.

8. The learned counsel for the Defendant further submits that both the courts below failed to consider the fact that the Defendant had paid half rent to the co-owner. He submits that these facts show that the Defendants were not in arrears of rent in respect of the suit premises. Hence, the judgment and decree passed by the courts below required to be set aside.

9. Heard the learned counsel for the Defendant/Appellant at length. It is to be noted that though the suit filed by the Plaintiff for vacant and peaceful possession of the rental premises on the ground of arrears of rent and *bona fide* requirements, the Defendants failed to enter into witness box. Both the courts categorically held that though the Defendants, in their written statement stated that they forwarded rent to the Plaintiff by money order, same was not proved by the Defendants by placing on record any cogent evidence. Both the courts specifically recorded in the decree that the Plaintiff has more than 13 members in their family and they require the suit premises for their *bona fide* use and occupation.

10. The Apex Court in the matter of ***Bellachi (Dead) by LR Vs. Pakeeran, 2009(12) SCC 95*** held that the High Court, in Second Appeal can interfere with the concurrent findings of facts only if substantial question of law arises in the appeal.

11. Considering the concurrent findings of facts recorded by the courts below and the law laid down by the Apex Court, I do not find any reason to entertain the Second Appeal. Hence, same stands rejected.

(K.K.TATED,J.)

CERTIFICATE

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