

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

CIVIL REVISION APPLICATION NO. 1200 OF 2014

Somprakash Rambabu Agrawal ..Applicant

Vs

Shri Bholedasji Temple and Ors .. Respondents

Mr. Pramod N. Joshi, Advocate for Applicant.

Mr. Milind M. Sathaye, Advocate for Respondents.

CORAM : R.G.KETKAR,J.

DATE : 27/06/2016

PC:

1. Heard Mr. Pramod Joshi, learned counsel for the applicant and Mr. Milind Sathaye, learned counsel for the respondents at length.

2. By this application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), original defendant has challenged the Judgment and decree dated 28.9.2007 passed by the learned II Jt. Civil Judge, Jr.Dn., Nashik in Regular Civil Suit No. 305 of 2004 as also the Judgment and decree dated 25.2.2011 passed by the learned Extra Jt. Ad-hoc District Judge, Nashik in Civil Appeal No. 311 of 2007. By these orders, the Courts below decreed the suit instituted by respondent no.1, hereinafter referred to as 'plaintiff', under sections 15 and 16 (1)(g) of the Maharashtra Rent Control Act, 1999 (for short, 'Act').

3. In support of this Application, Mr.Joshi strenuously contended that from bare reading of the plaint, it would be evident that the plaintiffs are claiming possession on the ground under section 16(1)(i) of the Act. He submitted that if eviction is sought under section 16(1)(i), in that event the plaintiff has to comply with the requirement laid down under sub-section (6) of Section 16 thereof. In particular, under section 16(6)(d)(ii), the landlord has to give an undertaking that the premises specified in sub-clause (i) will be offered to the concerned tenant or tenants in the re-erected building or, as the case may be, on the new floor or floors. He submitted that as the suit is essentially under section 16(1)(i), as per section 16(6)(d)(ii), the defendant is entitled to be offered equivalent area of the premises in his occupation subject to variation of 5% in the area in the re-erected building.

4. Mr. Joshi further submitted that as for as the ground of default under Section 15 of the Act is concerned, the plaintiff had issued demand notice on 5.1.2004 claiming arrears of rent to the tune of Rs.800/- for the period from 1.1.2001 to 31.12.2003. The plaintiff claimed rent at the rate of Rs.15/- plus 1.65 paise towards education cess. (in all aggregate Rs.16.65 paise P.M.) He submitted that the educational cess is payable yearly. He submitted that the defendant gave reply on 1.4.2004 and

thereafter tendered Rs. 799/- by Money Order. However, the plaintiff refused to accept the said money Order. He submitted that the Courts below discarded his case on the ground that there is no pleading to that effect. He invited my attention to paragraphs 8 and 11 of the Written Statement as also paragraph 3 of evidence of the defendant.

5. Mr. Joshi further submitted that the applicant has taken out Civil Application (ST) No.16418 of 2016 under Order 41, Rule 27 of C.P.C for producing additional evidence to substantiate that as the respondent-plaintiff has obtained another premises and also has obtained substantial portion of tenant Tambe, their requirement does not subsist. He submitted that for the reasons stated in that application, the defendant may be permitted to produce additional evidence.

6. On the other hand, Mr. Satheye supported the impugned orders. He submitted that in the Courts below the defendant did not come with the case that the plaintiff's case falls under section 16(1)(i) and not under section 16(1)(g). In other words, for the first time, during the course of arguments of C.R.A., this contention is advanced. He further submitted that the Courts below, after considering the material on record, have concurrently decreed the suit under section 16(1)(g) of the Act.

7. As far as ground under section 15 is concerned, he

submitted that the defendant has not complied Section 15(3). He, therefore, submitted that no case is made out for invocation of powers under section 115 of C.P.C.

8. As far as the application for production of additional evidence is concerned, he submitted that it is bereft of particulars and no case is made out as contemplated by Order 41, Rule 27.

9. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. I will deal with Civil Application under Order 41, Rule 7 separately. As far as the contention of Mr. Joshi that the case falls under section 16(1)(i) and not one under section 16(1)(g) is concerned, I do not find any merit in this submission for more than one reason. In the first place, in paragraph 6 of the plaint, the plaintiff specifically asserted the requirement of the public trust, namely, the plaintiff. In particular, the plaintiff asserted that at a time 5 to 6 devotees can perform individual prayers and take Darshan of Deity. However, on occasions like Hanuman Jayanti and Ramnavami, there is tremendous crowd and in these circumstances, temple requires additional space. The trust, namely, the plaintiff, requires the suit premises for its own use and occupation. Incidentally in paragraph 6 of the plaint, the plaintiff asserted that temple is

very old and construction is of temporary nature and is in dilapidated condition. In view thereof, it is necessary to reconstruct temple. Perusal of the written statement filed by the defendant and in particular paragraph 9 thereof, shows that the defendant denied the assertions made in paragraph 6. The defendant even denied that temple is 70 to 80 years old and that it is in dilapidated condition. In other words, the defendant did not contend that the case squarely falls under section 16(1)(i) and consequently he is entitled to benefit of section 16(6)(d)(ii). Secondly, perusal of the impugned orders does not indicate that any contention based on Section 16(1)(g), visa-vis section 16(1)(i) was advanced. Thirdly, I do not find any merit in view of language employed in Section 16(1)(g) and (i).

10. Section 16(1)(g) and (i) reads thus:

“16. When landlord may recover possession.

(1) Notwithstanding anything contained in this Act but subject to the provisions of section 25, a landlord shall be entitled to recover possession of any premises if the court is satisfied-

(g) that the premises are reasonably and bona fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held or where the landlord is a trustee of a public charitable trust that the premises are required for occupation for the purposes of the trust; or

(i) that the premises are reasonably and bona fide required by the landlord for the immediate purpose of demolishing them and such demolition is to be made for the purpose of

erecting new building on the premises sought to be demolished;"

When the premises are required by the landlord for occupation for himself or by any person for whose benefit the premises are held or where the landlord is a trustee of a public charitable trust that the premises are required for occupation for the purposes of the trust, the case will fall in clause (g) of Section 16(1). Where the premises are reasonably and bona fide required by the landlord for the immediate purpose of demolishing them and such demolition is to be made for the purpose of erecting new building on the premises sought to be demolished, the case will fall in clause (i) of Section 16(1). In my opinion, the element of requirement of landlord for occupation by himself or by any person for whose benefits the premises are held or for the occupation for the purpose of trust, is totally absent in clause (i) of Section 16 (1) of the Act. If this distinction is borne in mind, and if assertions made in paragraph 6 of the plaint is considered, in my opinion, the case squarely falls under section 16(1)(g) of the Act. I, therefore, do not find any merit in the submission advanced by Mr Joshi based on S. 16(1)(g) vis-a-vis Section 16(1) (i) and that the case falls in Section 16(1)(g).

11. The Courts below have considered the requirement of the plaintiff. In particular, the Appellate Court has considered the

requirement in paragraph 8 and hardship in paragraph 11. Mr Joshi invited my attention to paragraph 9 to contend that the defendant advanced argument about the fact that no building plan or permission was obtained by the plaintiff from local authority to contend that Section 16(1)(i) was pressed into service. I do not find any merit in this submission as no such case was made out even in the written statement. Even otherwise, I have held that the case squarely falls under section 16(1)(g) of the Act.

12. As far as ground under section 15 is concerned, the Courts below have held that the defendant has not complied the requirement of section 15(3) of the Act. In other words, the defendant did not tender Rs. 799/- along with 15% simple interest as contemplated therein. In paragraph 7, the learned District Judge has observed that though the defendant has deposited in court amount of Rs. 800/- , it is 103rd day from the date of summons and not within 90 days. The defendant has not deposited simple interest at the rate of 15% per annum and also has not paid rent regularly during pendency of the suit.

13. Mr. Joshi submitted that the amount of Rs.799/- was tendered by Money Order. The Courts below rejected this submission on the ground that there is no pleading. Even if it is accepted for the first moment that the defendant has tendered

Money Order of Rs.799/-, no particulars are furnished as to when the same was tendered. Defendant was not in a position to demonstrate that the findings recorded by the Courts below are based on no evidence or that they are contrary to evidence on record. Defendant was also not in a position to demonstrate that no reasonable or prudent person would have reached the conclusions arrived at by the Courts below. For all these reasons, I do not find that the Courts below have committed any error in passing the decree under sections 15 and 16(1)(g) of the Act. No case for invocation of powers under Section 115 is made out. Hence, Application fails and the same is dismissed.

(R.G.KETKAR, J.)