

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**Civil Revision Application NO. 26 OF 2016**

Municipal Corporation Of Greater Mumbai                      ...Applicant  
*Versus*  
Mr. Bakul Maganlal Vyas And Ors                                      ...Respondents

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Mr.G.S. Godbole, Senior Advocate a/w. S.K. Sonawane, Vinod  
Mhadik, i/b. U.H. Deshpande, Advocate for the Applicant.  
Mr. A.A. Kumbhakoni, Senior Advocate, a/w. Shardul Singh i/b.  
Vaibhav R. Gaikwad, Advocate for the Respondents.

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CORAM : R. G. KETKAR, J.

DATE : 5<sup>th</sup> July, 2016

P.C.

1. Heard Mr. G.S. Godbole, learned Senior Counsel for the applicant and Mr. A.A. Kumbhakoni, learned Senior Counsel for the respondents, at length.

2. By this application under Section 115 of Code of Civil Procedure, 1908 (for short, 'C.P.C.') the applicant has challenged the judgment and decree dated 9.5.2014 passed by the learned Judge, presiding over Court Room No.6 of the Small Causes Court at Mumbai in R.A.E. & R. Suit No.654/962 of 2006 as also the judgment and decree dated 9.12.2015 passed by the

Appellate Bench of Small Causes Court at Bombay in (A-1) Appeal No.244/2014. By these orders, the Courts below decreed the suit instituted by the respondents, hereinafter referred to as the 'plaintiffs' under Sections 15 and 16(1)(n) of the Maharashtra Rent Control Act, 1999 (for short, 'Act'). The plaintiffs instituted the suit against the applicant, hereinafter referred to as the 'defendant', for recovery of rooms No.25 to 35 and 44 to 48 on the 2<sup>nd</sup> floor of the property known as 'Diamond Mansion', 366-368, situate at C.T.S. No.757 of Kalbadevee Road, Dr. Viegas Street, Mumbai – 400 002 (for short, 'suit property').

3. In support of this application, Mr. Godbole strenuously contended that the Courts below were not justified in passing the decree under Section 15 of the Act. He invited my attention to the demand notice dated 15.12.2005 issued by the plaintiffs. In that notice, the plaintiffs alleged that from 1.4.1985 to 30.11.2005 the defendant has not paid the rent and the permitted increases aggregating to Rs.4,65,643.89/-. The defendant has failed and neglected to pay the said amount despite repeated requests and demands made from time to time. He submitted that said notice was addressed to the Municipal

Commissioner of the defendant. In the first place, said notice is not served either on the Municipal Corporation or on Municipal Commissioner. Even if for the time being it is assumed that the notice is served on the Municipal Commissioner, nevertheless the notice is not served on the Corporation who is a tenant. There is no privity of contract between the plaintiffs and the Municipal Commissioner. Notice addressed to the Municipal Commissioner itself is bad in law. He relied upon Section 15(2) of the Act as also Sections 63A, 64(2) and 527 of the Mumbai Municipal Corporation Act, 1888 (for short, 'Corporation Act'). In terms of Section 64(2), the Municipal Government of Brihan Mumbai vests in the Corporation. He submitted that as the notice was not issued to the contractual tenant, namely, the Municipal Corporation same is bad in law and the Courts below were not justified in decreeing the suit under Section 15 of the Act.

4. Insofar as the ground of non-user is concerned, he invited my attention to paragraph-9 of the written statement and submitted that the building where the suit premises is situate is in a very dilapidated and dangerous condition. The

plaintiffs have failed and neglected to maintain the building. The suit premises are not in a habitable condition, and the same has resulted in being humanely inhabitable condition. Internal walls are broken and damaged at several places. In view of dangerous and dilapidated condition of the building, the defendant decided to discontinue the school as the students and other inmates will be exposed to the risk of life. In other words, the defendant came with reasonable and sufficient cause for not using the suit premises. He, therefore, submitted that the Courts below were not justified in passing the decree under Section 16(1)(n) of the Act.

5. On the other hand, Mr. Kumbhakoni supported the impugned orders. He relied upon Sections 64, 63(3) and 527 of the Corporation Act. He also invited my attention to the findings recorded by the appellate Court in paragraph-18 of the impugned order. In paragraph-18, the Appellate Court recorded that perusal of the demand notice dated 15.12.2005 at Exhibit-51 shows that same bears the seal of the Corporation and signature of employee in token of receiving it. Said notice was delivered personally to the office of Corporation on 16.12.2005.

Section 106 of the Transport of Property Act, 1882 (for short, 'T.P. Act') requires sending of notice by (i) post or (ii) by delivery in person or (iii) delivery to the family members or servants and affixing to the conspicuous part of the property. The Appellate Court recorded that in the present case the notice Exhibit-41 was delivered personally to the office of the Corporation and it bears the seal of the Corporation. The notice is duly issued to and received by the contractual tenant i.e. the Corporation. Appellate Court also recorded a finding that the defendant has not complied with the requirements of Section 15 of the Act and there is no plausible defence for non-payment of rent.

6. As far as the ground of non-user is concerned, he invited my attention to the letter dated 7.6.1994 wherein it was admitted that the suit property is not being used. As far as the reasonable cause set up by the defendant is concerned, he invited my attention to paragraph-23 of the Appellate Court order. He submitted that after appreciating the evidence on record, the Courts below have decreed the suit under Sections 15 and 16(1)(n) and, therefore, no case is made out for invocation of powers under Section 115 of C.P.C..

7. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. As far as the ground under Section 15 of the Act is concerned, it is no doubt true that the notice is addressed to the Municipal Commissioner of the Corporation. On behalf of defendant Sudha Shrikant Talashilkar, Administrative Officer (School) was examined. During the course of cross-examination, she admitted that the demand notice dated 15.12.2005 Exhibit-41 bears one rounded rubber stamp of the defendant. She further stated that it is correct to say that in paragraph-3 of the notice, there is mention that “This is a notice under Section 527 of Corporation Act and Section 15(2) of the Act”. In other words, the witness on behalf of the defendant admitted that the notice Exhibit-41 bears stamp of the defendant Corporation.

8. In paragraph-18, the Appellate Court held that the notice was duly received by the Corporation and same bears the seal of the Corporation and signature of the staff/officer in receipt of it. Appellate Court held that in the present case the demand notice was delivered personally in the office of the

Corporation as is required under Section 106 of the T.P. Act. Thus the notice is duly served upon the contractual tenant.

9. Section 64(2) of the Corporation Act lays down that the Municipal Government of Brihan Mumbai vests in the Corporation. Sub-section (3) thereof lays-down that whenever it is in the Corporation Act expressly so directed, to the approval or sanction of the Corporation or the Standing Committee or the Improvements Committee, or the Education Committee and subject also to all other restrictions, limitations and conditions imposed by the Corporation Act, the entire executive power for the purpose of carrying out the provisions of the Corporation Act vests in the Commissioner. Section 61 of the Corporation Act deals with the obligatory duties of the Corporation. Section 61 lays down that it shall be incumbent on the Corporation to make adequate provision, by any means or measures which it is lawfully competent to them to use or to take, for each of the following matters, namely, (q) maintaining, aiding and suitably accommodating schools for primary education subject always to the grant of building grants by the State Government in accordance with the Government Grant-in-aid Code for the time

being in force. Thus, the conjoint reading of sub-section (q) of Section 61 with Section 64(3) thereof shows that the entire executive power for the purpose of carrying out provisions of the Corporation Act vests in the Commissioner. In view thereof, I do not find that the Courts below committed any error in holding that the notice was duly served on the contractual tenant, namely, the defendant Corporation. It is not in dispute that after service of demand notice, the Corporation has not complied the requirement laid-down in Section 15 of the Act. The Courts below were, therefore, justified in passing the decree under Section 15 of the Act.

10. As far as the ground of non-user under Section 16(1)(n) of the Act is concerned, the Courts below after appreciating the evidence on record have concurrently held that the plaintiffs have established non-user and the defendant did not establish reasonable cause. In paragraph-23, the Appellate Court referred to the evidence of Smt. Sudha Talashilkar, the sole witness examined by the defendant. In paragraph-24, the Appellate Court also referred to the correspondence Exhibits-44 and 45. From these correspondences, it is evident that the

Corporation made coercive demand of Rs.1,24,19,761/- from the plaintiffs to surrender the suit premises. In paragraph-25, the appellate Court held that the defendant is not using the suit premises without any reasonable cause for a period of more than six months preceding institution of the Suit. There is no cause pressed into service is also not established by the defendant. After appreciating the evidence on record, I do not find that the Courts below committed any error in decreeing the suit under Section 16(1)(n) of the Act. No other contention is advanced.

11. The defendant was not in a position to demonstrate that the findings recorded by the Courts below are perverse being based on no evidence or that they are contrary to evidence on record. The defendant was not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the Courts below. Hence, no case for invocation of powers under Section 115 of C.P.C. is made out. Civil Revision Application fails and the same is dismissed. In the circumstances of the case, there shall be no order as to costs.

12. At this stage, Mr. Shardul Singh submitted that the defendant has deposited interim compensation in the trial Court from August, 2014 as per the order passed by the Appellate Court in an application under Order 41 Rule 5 of C.P.C.. He submitted that the plaintiffs may be permitted to withdraw this amount. He further states that in the event of the defendant succeeding in the higher Court, the plaintiffs will abide by the said decision and if ordered, will refund said amount together with interest at such rate as may be specified in that regard. He states that the plaintiffs will file undertaking in that regard within two weeks from today after giving advance copy to the other side. Mr. Godbole opposes this and submits that the plaintiffs may not be permitted to withdraw the amount deposited by the defendant.

13. It is not in dispute that the suit instituted by the plaintiffs was decreed by the trial Court on 9.5.2014. Aggrieved by that decision, the defendant preferred appeal. Pending the appeal, the defendant took out application for stay of the execution of the decree under Order 41 Rule 5 of C.P.C.. While granting stay, the Appellate Court directed the defendant to

deposit interim compensation which accordingly the defendant has deposited from August, 2014. As the appeal preferred by the defendant is dismissed as also I have rejected the Civil Revision Application, I find that the request made by Mr. Singh is reasonable. In view thereof, the plaintiffs are permitted to withdraw the amount deposited by the defendant from August, 2014 subject to the plaintiffs giving undertaking to this Court within two weeks from today to the effect that in the event the defendant succeeds in the higher Court, the plaintiffs will refund that amount to the defendant together with interest at such rate as may be specified in that regard. As the defendant will be depositing entire arrears of rent @ Rs.870/- per month from 1.1.2016 till 30.9.2016 in the trial Court on or before 1.8.2016, the plaintiffs are also permitted to withdraw said amount unconditionally.

14. At this stage, Mr. Godbole prays for stay of this order for a period of 12 weeks from today. He has tendered undertaking of Mr. G.R. Kulkarni, Education Officer dated 5.7.2016. Said undertaking is taken on record and marked 'X' for identification. Undertaking is accepted.

15. In view thereof, notwithstanding dismissal of this application, the eviction decree shall not be executed for a period of 12 weeks from today. It is made clear that in case the defendant does not deposit entire arrears of rent @ Rs.870/- per month from 1.1.2016 till 30.9.2016 in the trial Court under intimation in writing to the plaintiffs' Advocate on or before 1.8.2016, the interim stay shall stand vacated without further reference to the Court.

(R. G. KETKAR, J.)

Deshmane (PS)