

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.20 OF 2013

Jasumatiben Hakimchand Jhatakia and others ... Applicants

Vs.

Narendra B. Mantri ... Respondent

Mr. R. A. Thorat, Senior Advocate i/b. Mr. P. J. Thorat for Applicants.

Mr. P. K. Dhakephalkar, Senior Advocate i/b. Mr. Kunal Bhanage for Respondent.

CORAM : R. G. KETKAR, J.

DATE : AUGUST 3, 2016

P.C. :

Heard Mr. Thorat, learned Senior Counsel for applicants and Mr. Dhakephalkar, learned Senior Counsel for respondent at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicants, hereinafter referred to as 'defendants', have challenged the judgment and decree dated 20.08.2009 and 21.08.2009 passed by the learned Judge presiding over Court Room No.32 of the Court of Small Causes at Bombay (Bandra Branch) in R.A.E. Suit No.46/112 of 2000 as also the judgment and decree dated 31.10.2012 passed by the Appellate Bench of the Small Causes Court in Appeal No.33 of 2010. By these orders, the Courts below decreed the Suit instituted by the respondent, hereinafter referred to as 'plaintiff', under Section 13(1)(g) of the Bombay Rents Hotel and Lodging House Rates Control Act, 1947 (for short 'Act') and directed the defendants to handover possession of shop No.4 admeasuring about 240 sq.ft. in Mantriwadi situate on C.T.S.No.604-E, Sainath Road, Malad (West), Mumbai 400 064 (for short 'suit premises').

3. Plaintiff had instituted Suit against the defendants inter alia contending that he requires the suit premises for his own bonafide use and occupation to start business of Kirana and general stores from the suit premises. Plaintiff contended that he does not have any other premises in his possession. He requires the suit premises for his family members for starting business. Plaintiff further contended that on 13.10.2003, he retired from service. Though plaintiff had obtained possession of shop No.6 admeasuring 9" x 10" in pursuance of the ex-parte decree passed against defendant in R.A.E. Suit No.1010 of 1996, defendant therein took out application for setting aside the ex-parte decree. Shop No.6 is not suitable for carrying on business. The requirement of the plaintiff is atleast to the extent of 200 sq.ft. to 250 sq.ft. The suit premises admeasures about 250 sq.ft., and therefore, it is suitable for carrying on business.

4. Defendants resisted the Suit by filing written statement inter alia contending that plaintiff has transferred tenancies in the last three years which shows that he is interested only in claiming premium and his need is neither real nor genuine. After amendment of the plaint, defendants filed additional written statement inter alia contending that after obtaining possession of shop No.6 admeasuring 9" x 10", plaintiff has inducted the third party on leave and licence basis. Plaintiff has also constructed shops each admeasuring about 100 sq.ft. and that those shops have been let out to three different tenants. Pending the Suit, plaintiff has already constructed about 400 sq.ft. in the suit property and the same is used for carrying on various businesses by the new tenants, after the plaintiff let out the same to them.

5. On the basis of the pleadings of the parties, the learned trial Judge framed the necessary issues. Parties led evidence. After considering the

evidence on record, the Courts below decreed the Suit under Section 13(1)(g) of the Act and also held that greater hardship will be caused to the plaintiff in the event of refusal to pass eviction decree. It is against these orders, defendants have instituted the present Application.

6. In support of this Application, Mr. Thorat strenuously contended that the Courts below were not justified in passing the decree. He has taken me through the pleadings as also oral evidence. In substance, Mr. Thorat submitted that plaintiff is having several properties. He has also constructed 4 new shops during the pendency of the Suit and let out to the tenants. During the pendency of the Suit, plaintiff has obtained the possession of shop No.6 where he can start his Kirana business. Plaintiff is also having a big bungalow and outhouse facing towards S. V. Road and open space is also available to the plaintiff where he can construct shop and start his business. Plaintiff has also let out Gala No.2 to one Jain Brothers in the year 1997 which shows that plaintiff has instituted the present Suit only with a view to recovering the suit premises and letting out to the other persons on huge rent. Apart from that, during the pendency of the Suit, plaintiff has obtained possession of 10 galas in execution of decree in Suit No.T.E.41/50 of 2003. That apart, plaintiff is a qualified Architect and it is inconceivable that after his retirement, he will start business of Kirana shop. Plaintiff's financial condition is also extremely sound. He is earning huge income from rent of premises let out to the various tenants. He, therefore, submitted that plaintiff's requirement is neither reasonable nor bonafide.

7. On the other hand, Mr. Dhakephalkar supported the impugned orders. He submitted that after considering the material on record, the Courts below have concurrently held that the requirement pleaded by the plaintiff is, both, reasonable as also bonafide. As far as obtaining

possession of 10 galas during the pendency of the suit premises is concerned, he submitted that plaintiff had let out open land to one Lakhubhai Gohil. Several structures were constructed on the open land and Lakhubhai in turn had inducted several persons in structure. Plaintiff had instituted Suit, namely R.A.E.Suit No.114/354/1998 against Lakhubhai Gohil. The Suit was decreed by directing to handover possession of open land after demolition of the structures constructed thereon. The said decree is confirmed right upto the Apex Court and now in execution proceedings, the trial Court has fixed the matter on 29.08.2016 for deciding the application filed by the plaintiff for demolishing the structures standing thereon. In other words, he submitted that the said galas are not available to the plaintiff. He submitted that no case is made out for invocation of powers under Section 115 of C.P.C.

8. I have considered the rival submissions advanced by the learned Senior Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the Courts below have decreed the Suit under Section 13(1)(g) of the Act. The Courts below have considered the contention advanced on behalf of the defendants that plaintiff had let out gala No.2 to Jain Brothers in 1997 and that during the pendency of the Suit, he had obtained possession of 10 galas in execution of decree passed in T.E.Suit No.41/50 of 2003. The Courts below also considered the contention advanced by the defendants that 3 shops, each admeasuring 100 sq.ft. were constructed by the plaintiff and were let out to three different tenants. The Courts below also considered the contention of the defendants that plaintiff had constructed shop admeasuring 400 sq.ft. and inducted new tenants.

9. As far as the trial Court is concerned, the learned trial Judge has

considered availability of premises to the plaintiff from paragraphs 33, 42 to 45 and 51 to 59. The learned trial Judge also considered the contention advanced on behalf of the defendants as regards financial capacity of the plaintiff from paragraph 62, and ultimately in paragraph 67, the learned trial Judge has held that plaintiff has proved that he wants to start his business of Kirana and General Stores for which suit premises is reasonably and bonafidely required by him. Defendants have failed to prove the malafides on the part of the plaintiff.

10. As far as the question of comparative hardship is concerned, the learned trial Judge has dealt with this aspect from paragraphs 68 to 75. The learned trial Judge observed that defendants have not brought on record circumstances to show that they are carrying on business of plastic products from the suit premises in their personal capacity. On the contrary, one Ramniklal Desai is a partner and is running the business. The learned trial Judge ultimately answered the issue of hardship in favour of the plaintiff.

11. As far as the appellate Court is concerned, the appellate Court has re-appreciated the entire evidence. The appellate Court has considered the availability of the premises to the plaintiff in paragraph 7. The appellate Court also considered the financial condition of the plaintiff in paragraph 8 and ultimately held that plaintiff has proved that he wants to start business of Kirana and General Stores and his requirement appears to be reasonable and bonafide. In paragraph 9, the appellate Court has considered the question of comparative hardship. It was also noted that defendants did not enter into witness box. Defendants have miserably failed to prove that they are carrying on business of plastic products from the suit premises in their personal capacity. On the contrary, Ramniklal Desai was the partner of the original tenant - Hakimchand

Jhatakia and was running the business. Defendants are not running the business in the suit premises nor there is any evidence on record to show that they are also running the business with Ramniklal Desai. After considering the material on record, the Courts below have decreed the Suit.

12. As far as contention of the defendants that during the pendency of the Suit, plaintiff has secured possession of 10 galas in execution of decree is concerned, it is not in dispute and is rather a matter of record that Suit was instituted by the plaintiff against Lakhubhai Gohil for recovery of possession of open land. On that land, Lakhubhai had carried out construction and inducted third parties. The trial Court decreed the Suit and had directed demolition of structure standing thereon. Said decree is confirmed right upto the Apex Court. That apart, plaintiff has filed execution proceedings and application filed by the plaintiff for demolishing 10 shops is fixed for hearing on 29.08.2016. Mr. Bhanage states that plaintiff will demolish those structures. Statement made by Mr. Bhanage is recorded. In short, these premises are not available to the plaintiff. The Courts below have considered availability of the premises to the plaintiff as contended by the defendants and have decreed the Suit. Defendants were 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 the evidence on record. Defendants were also not in a position to demonstrate that reasonable or prudent person would have reached the conclusions arrived at by the Courts below. Hence, no case is made out for invocation of powers under Section 115 of C.P.C. Application fails and the same is dismissed.

13. At this stage, Mr. Thorat orally applies for stay of this order for

the period of 12 weeks from today. He assures that within three weeks from today, defendants and all the adult family members using the suit premises, will file usual undertaking incorporating therein that,

- i) they are in possession and nobody else is in possession of the suit premises;
- ii) they have neither created third party interest nor parted with possession of the suit premises;
- iii) they will hereafter neither create third party interest nor part with possession of the suit premises;
- iv) they will pay up-to-date arrears of rent to the plaintiff within two weeks from today;
- v) in case they are unable to obtain suitable orders from the higher Court within twelve weeks from today, they will vacate and handover vacant and peaceful possession of the suit premises to the plaintiff;

14. Subject to the defendants and all the adult family members using the suit premises filing undertaking in the aforesaid terms within three weeks from today after giving advance copy to the other side, this order shall remain stayed for a period of twelve weeks from today. It is made clear that in case defendants do not file undertaking within three weeks from today, the interim order shall stand vacated without further reference to the Court.

15. List the Application for 'reporting compliance' after four weeks.

(R. G. KETKAR, J.)