

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 37 OF 2016

Alimohammad Suleman Khan

Through LRs

...Applicants

Versus

Noormohammad Abdulla Tamboli

(shaikh) Through LRs

...Respondents

....

Mr. Praful B. Shah, Advocate i/b. Kayval P. Shah, for the Applicants.

Mr. V.S. Talkute, Advocate for the Respondents.

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CORAM : R. G. KETKAR, J.

DATE : 29th June, 2016

P.C.

1. Heard Mr. Praful Shah, learned Counsel for the applicants and Mr. V.S. Talkute, learned 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 applicants, hereinafter referred to as the 'defendants', have challenged the judgment and decree dated 16.6.2014 passed by the learned 3rd Joint Civil Judge, Junior Division, Satara in Regular Civil Suit No.568/1993 as also the judgment and decree dated 30.11.2015 passed by the learned District Judge-5, Satara in Regular Civil Appeal No.174/2014. By these orders, the Courts below decreed

the suit instituted by the respondents, hereinafter referred to as the 'plaintiffs', under Section 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, 'Act').

3. In support of this application, Mr. Shah strenuously contended that the plaintiffs have several premises as more particularly referred in paragraph-17 of the order of the learned District Judge. He submitted that the suit is instituted in the year 1993 invoking the ground of reasonable and bonafide requirement. In the year 1991-92, the plaintiffs have let out property adjacent to the suit premises to Savkar Transport. Savkar Transport have vacated that premises and presently the plaintiffs are in possession. He submitted that in the first place, the property was let out to Savkar Transport in the year 1991-92 and the suit is instituted in the year 1993. This itself reflects on the bonafides of the plaintiffs. If at all the plaintiffs genuinely required the suit premises to carry on business, they would not have let out the premises adjacent to the suit premises to Savkar Transport. Secondly, he submitted that said premises are now available, the need of the plaintiffs does not subsist. He has taken me through the evidence of PW-2 Daud Hussain Shaikh. In the cross-examination, PW-2 Daud

admitted that the premises let out to Savkar Transport are in the thickly market area. Mr. Shah, therefore, submitted that the plaintiffs have secured possession from Savkar Transport pending the proceedings and also said premises are in market area, the need of the plaintiffs does not subsist.

4. Mr. Shah further submitted that adjacent to the suit premises there is one room which is also facing towards the road. Said premises are available to the plaintiffs for carrying on their business. He, therefore, submitted that as the premises are available to the plaintiffs, the need does not subsist.

5. Mr. Shah submitted that the original plaintiff has expired. The plaintiff came with the case that the suit premises are required reasonably and bonafide for his son Rafiq. Rafiq did not enter into the witness box. He submitted that Rafiq and Daud are carrying on business of fabrication work. He submitted that as Rafiq for whose requirement the suit is instituted did not enter into the witness box shows that the need set up by the plaintiff is malafide. For all these reasons, he submitted that the application requires consideration.

6. On the other hand, Mr. Talkute supported the impugned orders. He submitted that after appreciating the

evidence on record, the Courts below have concurrently held that the requirement pleaded by the plaintiff is both reasonable as also bonafide. He invited my attention to paragraph-45 of the trial Court's judgment and submitted that the premises handed over by Savkar Transport are used for residential purpose and the same is evident from the report submitted by the Court Commissioner. Apart from that the premises of Savkar Transport is concerned, he submitted that a open plot was let out by Satara Municipal Council. He has constructed a building. He submitted that the defendant in his cross-examination admitted that the new construction is located inside the main road. It is not suitable for carrying on business.

7. As far as the adjacent premises are concerned, in paragraph-28, the learned District Judge recorded that the premises adjacent to the suit premises is not facing the main road. They are used for residential purpose and Rafiq along with his family is residing there. He, therefore, 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 Counsel appearing for the parties. I have also

perused the material on record. As the premises let out to Savkar Transport is concerned, it is evident from record that open plot was let out by Satara Municipal Council. DW-1 Ali Khan admitted that towards southern side of suit premises, there is stream-let and one bridge has been constructed and the plaintiff has taken the place on stream-let from Satara Municipal Council. He further admitted that the new building constructed is inside from road and on the upper floor the plaintiff used it for his residential purpose. In paragraph-45, the learned trial Judge recorded a finding that the premises let out to Savkar Transport are used by the plaintiff and his family for residential purposes. Said finding is based on the report submitted by the Court Commissioner. Apart from this, admittedly the premises, namely, C.T.S. No.543 belongs to Satara Municipal Council over which the plaintiffs have raised construction. The Courts below, therefore, held that the suit premises are not suitable for carrying on business as it is located inside the main road and also is used for residential purposes.

9. As far as the premises adjacent to the suit premises is concerned, in paragraph-28 the learned District Judge recorded

that the said premises is not facing the main road and they are used for residential purposes. Thus, the Courts below after appreciating the evidence on record have concurrently held that the plaintiffs have established that their requirement is both reasonable as also bonafide. On the question of comparative hardship, the Courts below have answered that issue in favour of the plaintiffs. While answering that issue in favour of the plaintiffs, the Courts below have found that the defendants are having their own premises, namely, C.T.S No.168, 169 at Budhwar Peth. In the said premises, floor mill is operating. The learned District Judge also noted that the suit is instituted in the year 1993 and it is decided in the year 2014 i.e. after lapse of 21 years. In these years what efforts were made by the defendants to find out other premises is not brought on record. The learned District Judge held that upto the year 2014, the defendants have not made bonafide efforts for finding out other premises.

10. Mr. Shah submitted that the plaintiffs witness PW-2 Daud Hussain Shaikh admitted that the premises let out to Savkar Transport are in the market area. Said premises is suitable for carrying on business. For the reasons already

noted, I do not find any merit in the submission. No other contention is raised.

11. After considering the material on record, I do not find that the Courts below have committed any error. 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 evidence on record. Defendants were 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.

(R. G. KETKAR, J.)

Deshmane (PS)