

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

CIVIL REVISION APPLICATION NO. 282 OF 2016

Nuruddin A. Malik

..Applicant

Vs

1.Mrs Sharifabi Abubaker
Lambay and Anr.

.. Respondents

Mr. Amardev J. Uniyal, Advocate for Applicant.
Mr. V.Y.Sanglikar, Advocate for Respondents.

CORAM : R.G.KETKAR,J.
DATE : 01/08/2016

PC:

1. Heard Mr.Amardev Uniyal, learned counsel for the applicant and Mr.V.Y.Sanglikar, 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.'), the applicant, hereinafter referred to as 'defendant', has challenged the Judgment and decree dated 30.3.2016 passed by the Appellate Bench of the Small Causes Court at Mumbai in Appeal No. 789 of 2004. By that order, the Appellate Court allowed the Appeal preferred by the respondents, hereinafter referred to as 'plaintiffs', and quashed and set aside the Judgment and decree dated 13.8.2004 passed by the learned trial Judge in R.A.E. Suit No.2954 of 1984.

The Appellate Court decreed the suit and directed the defendant to hand over the vacant and peaceful possession of Room no.2, Mirchandani Chawl No.2, Mukka Wadi, near Mill Ward, Shanti Nagar, B.S.T.Road, Kurla, Mumbai 400070 (for short, 'suit premises & suit chawl respectively), to the plaintiffs within 60 days from the date of the order. The defendant was also restrained from parting with possession of the suit premises or creating third party interest therein.

3. Rule. Mr. Sanglikar waives service on behalf of the respondents. At the request and by consent of the parties, Rule is made returnable forthwith and Application is taken up for final hearing.

4. In support of this Application. Mr. Uniyal submitted that the plaintiffs have purchased the Chawl wherein there are three Rooms, namely, Rooms no.1, 2 and 3. Suit premises is Room no.2. Suit is instituted in the year 1984 on the ground of bonafide requirement. He submitted that the plaintiffs have inducted tenant in Room no.1 some time in the year 1987. In short, he submitted that this adversely affects bona fide requirement set up by the plaintiffs. Mr. Sanglikar has disputed this submission.

5. Mr. Uniyal further submitted that the plaintiffs are having premises, namely, Rooms 4, 8, 35 in B.I.T.Chawl at Dongri, Mumbai (for short, 'B.I.T. Chawl'). Though the plaintiffs claim to

have surrendered Room no.4 in the year 2007, still they are in possession of that room. He invited my attention to Birth Certificate issued on 11.4.2012 showing permanent address of parents of child Madina (Mohamed Shehzad and Mrs Mehjabeen Mohamed) as room no.4 of B.I.T.Chawl. The plaintiffs are residing in room no.35 in B.I.T.Chawl. Plaintiffs are also in possession of Room no.8 in B.I.T.Chawl. He submitted that the plaintiffs have not surrendered possession of Room no.8 in B.I.T.Chawl.

6. As against this, Mr. Sanglikar submitted that plaintiff's son, Mohamed Ashfaq is residing in Room no.3 of suit chawl. He submitted that Room no.4 in B.I.T. chawl is surrendered in the year 2007. Room no.1 in the suit chawl is not available to the plaintiffs as it was already let out to Mohd. Ibrahim. Plaintiffs family consists of 11 members. Elder son Mohd. Shehzad has three children. Younger son Ashfaq has two children. He submitted that the plaintiffs have surrendered possession of room no.8 in B.I.T.Chawl. In other words, the plaintiffs are in possession of rooms no.3 of suit chawl and 35 of B.I.T. chawl. Having regard to 11 members in the family of the plaintiffs, these premises will not satisfy the requirement of the plaintiffs.

7. The moot question is availability of premises to the plaintiffs and whether they satisfy the requirement of the plaintiffs. On one hand, the defendant contends that the plaintiffs

are in possession of rooms no. 1 and 3 in the suit chawl and rooms no. 4,8 and 35 in B.I.T. Chawl. As against this, the plaintiffs claim that room no.1 in suit chawl was let out to Mohd Ibrahim. Room no.3 is occupied by the plaintiff's younger son Mohd Ashfaq. Rooms no. 4 and 8 in B.I.T.Chawl are surrendered. The plaintiffs are residing in room no. 35 of B.I.T. chawl. Perusal of the Appellate Court judgment does not indicate that the Appellate Court has recorded any findings as regards availability of the premises to the plaintiffs.

8. Mr. Sanglikar states that respondent no.2 is present in the Court. He has tendered photocopy of Aadhar Card of Mr A.D.Lambay, which is taken on record and marked 'X' for identification. Upon taking instructions from him, Mr. Sanglikar consents for setting aside the Appellate Court's order as there is no finding as regards the availability of other premises to the plaintiffs. He submits that parties may be permitted to lead further evidence and the Appellate Court may be directed to dispose of the Appeal in a time bound manner.

9. In view thereof, by consent of the parties, Application is disposed of in the following terms:

(i) Judgment and decree dated 30.3.2016 is quashed and set aside and Appeal No.789 of 2004 is restored to the file of the Appellate Court.

(ii) Parties are permitted to lead additional evidence. The Appellate Court may either take additional evidence or direct the trial Court to take such evidence and to transmit the evidence so recorded to the Appellate Court. Parties assure that they will extend full cooperation for recording of additional evidence and will not seek undue adjournments. Let that exercise be done within three months from the date of appearance of the parties and in the event of taking additional evidence by the trial Court, the trial Court shall transmit the evidence so recorded to the Appellate Court forthwith.

(iii) After completion of recording of evidence, the Appellate Court is requested to dispose of the Appeal within three months from the receipt of additional evidence so recorded. All contentions of the parties on merits are expressly kept open. The Appellate Court will decide the Appeal uninfluenced by the observations made herein. The defendant shall neither create third party interest nor part with possession.

(iv) Rule is made absolute in the aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)