

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.288 OF 2014

Shri. Manohar Balkrishna Sagwekar

(Since deceased through his LRs)

Pradeep Manohar Sagwekar and others

.. Applicants

Versus

Smt. Latabai Bhaskar Deshmukh and another

.. Respondents

Mr. S. S. Punde, for the Applicants.

Mr. M. D. Modgi, for the Respondents.

CORAM : R.M. SAVANT, J.

DATE : 2nd MARCH 2016

PC.

1. The judgment and order dated 29.11.2013 passed by the Lower Appellate Court i.e. Learned District Judge-3, Thane, dismissing the Appeal filed by the Applicant being Civil Appeal No.72 of 2011 and thereby confirming the decree passed by the Trial Court dated 30.11.2010 is taken exception to by way of the above Civil Revision Application.

2. The suit premises is a Room No.9, admeasuring 10 ft. X 15 ft. known as Latabai Deshmukh Chawl, situated near Datta Mandir, Shivaji Nagar, 2nd Rabodi, Thane (W). It was the case of the Plaintiff that the said room was taken on monthly rent of Rs.58/- which included the permitted

increases. It seems that the original tenant died and his heirs were brought on record as the tenants. Since the original tenant was irregular in payment of rent and permitted increases and since he was in arrears of rent from September 1985 and since he also failed to pay the permitted increases from October 1982, a notice came to be issued to him which ultimately resulted in the termination of his tenancy. It was also the case of the Plaintiff that the Defendant i.e. the original tenant was not using the suit premises but had sublet it to some other person. It is on the said basis that the suit came to be filed for recovery of possession. It was the case of the Defendant that the relationship between the families were cordial and that he never demanded the rent receipts though he had paid the rent to the landlord's husband from time to time. It was also the case of the Defendant that on 2 – 3 occasions he has paid the rent in the presence of his neighbour Kadam and that he has made payments up to July 1995. it is on the basis of the said pleadings, the Trial Court framed the relevant issues. The Trial Court on the basis of the evidence which has come on record reached a conclusion that the tenant was irregular in payment of the rent though he had made various payments between the period 1996 to 2008. The Trial Court adverted to a table which was produced on behalf of the Plaintiff by way of evidence showing the manner in which the Defendant had paid rent. It is on the said basis that

the Trial Court concluded that the Defendant has fallen foul of Sections 12(2) and 12(3)(d) of the Bombay Rent Act and accordingly decreed the suit on the ground of default in payment of arrears of rent. The Trial Court however rejected the eviction on the ground of subletting.

3. The aggrieved Defendant carried the matter to the Appellate Court by way Appeal in Civil Appeal No.72 of 2011. The Lower Appellate Court on a re-appreciation of the matter on record and especially, the table which was produced by the Plaintiff to show irregular payment observed that the tenant paid the rent of 49 months on 14.10.1999 to the tune of Rs.2842/- at the rate of Rs.58/- per month, then for 8 months to the tune of Rs.360/- which was paid on 11.01.2001, then for 37 months to the tune of Rs.1575/- on 01.01.2004, then for the period of 90 months on 08.07.2010 to the tune of Rs.4410/- and lastly for the period of September 2010 to December 2011 to the tune of Rs.810/- on 02.12.2012. The aforesaid payments therefore according to the Lower Appellate Court indicate that the heirs of the original tenant have not discharged their obligation to pay the rent regularly so as to seek the protection of Section 12(3) of the Rent Act. The Lower Appellate Court therefore concluded that the Trial Court was right in passing the decree on the ground of arrears of rent and has dismissed the Appeal by the impugned judgment and order dated 29.11.2013.

4. The Learned Counsel appearing on behalf of the Applicant/ original Defendant would submit that the Defendant in fact has made the payment of rent albeit belatedly. In my view, the said contention cannot be accepted in view of the mandate of Section 12(3) of the Bombay Rent Act, 1947. The tenant is expected to be ready and willing to pay the monthly rent to the landlord on the date it falls due. However, in the instant case, as the record discloses the Defendant/tenant has made the payment in fits and starts, hence, the decree passed by the Trial Court as confirmed by the Lower Appellate Court based on the said concurrent findings of fact cannot be found fault with. No case for interference is therefore made out. The Civil Revision Application is accordingly dismissed.

5. At this stage, the Learned Counsel for the Applicants seeks continuation of the ad-interim relief which is operating in the above Civil Revision Application. In the facts and circumstances of the case, the said ad-interim relief is continued for a period of six weeks from date on the condition that the Applicants file an undertaking in this Court, that in the interregnum they would not deal with the property in question in whatsoever manner. The same to be done within two weeks from date. If the undertaking is not filed, then the benefit of the ad-interim order would not be available to the Applicants.

[R.M. SAVANT, J]