

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 145 OF 2015

M/s. Kalanki And Company
And Ors

...Applicants

Versus

Shri. Yashwantrao Ganpatrao Desai
And Anr

...Respondents

....

Mr.P.S. Dani, Senior Advocate i/b. Abhijit M. Adagule, Advocate
for the Applicants.

Mr.Surel S.Shah, Advocate for Respondent No.1.

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CORAM : R. G. KETKAR, J.

DATE : 12th July, 2016

P.C.

1. Heard Mr. P.S. Dani, learned Senior Counsel for the applicants and Mr. Surel Shah, learned Counsel for respondent No.1, 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 'defendants No.1 to 4', have challenged the judgment and decree dated 28.6.2011 passed by learned 2nd Jt. Civil Judge, Senior Division, Kolhapur in Special Civil Suit No.817/2003 as also the judgment and decree dated 30.12.2014

in Regular Civil Appeal No.247/2011. By these orders, the Courts below decreed the suit instituted by respondent No.1, hereinafter referred to as the 'plaintiff' under Sections 16(1)(g) and 16(1)(n) of the Maharashtra Rent Control Act, 1999 (for short, 'Act') and directed defendants No.1 to 4 to hand over vacant possession of shop admeasuring about 30 ft. in length and 20 ft. in width at Southern side of ground floor in the building situate at C.S. No.2093/1B, 'C' Ward, Kolhapur (for short, 'suit property') within 60 days from the date of the order. Liberty given by the learned trial Judge to the plaintiff to initiate separate enquiry regarding *mesne profit* as against defendants No.1 to 4 was set aside by learned District Judge.

3. In support of this Petition, Mr.Dani strenuously contended that requirement pleaded by the plaintiff is neither reasonable nor bonafide. He submitted that presently the plaintiff and his son are only residing. There is matrimonial dispute between the plaintiff's son and his wife and she is not residing with plaintiff's son. In short, he submitted that there are only two members in the family of the plaintiff. There are several premises which are available to the plaintiff which will

satisfy the plaintiffs requirement. He, therefore, submitted that the decree passed under Section 16(1)(g) of the Act by the Courts below is liable to be set aside.

4. As far as the ground of non-user under Section 16(1)(n) of the Act is concerned, he has taken me through the order passed by the Appellate Court and in particular from paragraphs No.36 to 44. He submitted that defendants No.1 to 4 are using the suit premises as a godown and for which all the licenses are obtained and are in force even today. He invited my attention to paragraph-39 of the District Court judgment to contend that defendants No.1 to 4 have purchased several items which clearly show that these defendants are carrying on business of selling grains and of General Store from the suit property. He submitted that in paragraph-41, the learned District Judge has given undue importance to not placing on record the documents establishing regular payment of telephone bills as also electricity bills showing the electricity consumption. In any case, he submitted that in case the Court is not inclined to admit Civil Revision Application, as the plaintiff has other premises available in the building where the suit property is

situate, defendants No.1 to 4 are willing to shift there. He therefore submitted that the application requires consideration.

5. On the other hand, Mr. Shah supported the impugned orders. He submitted that after appreciating the evidence on record, Courts below have concurrently held that the plaintiff has established the grounds under Sections 16(1)(g) and 16(1)(n) of the Act. As far as the suggestion made by defendants No.1 to 4 that they will shift in the building where the suit property situate, he submitted that except the suit property rest of the premises are residential premises. In view of Section 30 of the Act, they cannot be allowed to be used for Godown which is a commercial user.

6. I have considered rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the Courts below have decreed the suit under Sections 16(1)(g) and 16(1)(n) of the Act. Even accepting the case of defendants No.1 to 4 that the plaintiff has other premises available that will meet the requirement, Courts below have also passed decree under Section 16(1)(n) of the Act. The Courts below and in particular Appellate Court has

considered the documentary evidence on record. After considering evidence on record, in paragraph-41, learned District Judge has observed thus :

“41. The defendant No.1 in the cross examination has admitted that earlier there was telephone connection to the suit property. He did not put on record any document to show that he had regularly paid telephone bills from 1992 till institution of the suit. He further admitted that there was electric connection to the suit property. He did not put on record the electricity bills from 1992 onwards till institution of the suit to show that electric consumption was as usual which was before 1992, to show that the suit property being used by him. The defendant No.1, further admitted that under the provisions of Shop Establishment Act, the shop owner is required to maintain register disclosing the names of labourers, having signature of Shop Inspector. The said document is not put on record. It is to be noted that defendant No.1 has admitted that in the life time of his father one Gajanan Sadashiv Chipate was working as a Diwanji and he was being paid salary. It is clear that when Diwanji was appointed by the father, his duty was to maintain the account of the business. Defendant No.1 but denied the suggestions that Chipate was appointed to maintain the account. He denied this suggestion, perhaps only with intention that no fact of not maintaining account from 1992 shall come on record. It is important to note that defendant No.1, admitted that in the life time of his father there was an account of 'M/s. Kalanki and Company', in the Bank of Karad. But he did not put on record any

documents to show that after 1992 said account is being maintained. Defendants No.1 to 4, have not put on record single document to show that any of the goods/articles purchased through receipts produced by them on record was sold to the customers through the shop.”

7. In paragraph-42, learned District Judge observed that defendant No.1 carries on business in the name of 'Kalanki Vastra Bhandar'. Learned District Judge also noted that the suit is instituted on 13.8.2003 and the defendants No.1 to 4 did not produce material to substantiate that they are using suit property. Thus, the Courts below after appreciating evidence on record passed decree under Section 16(1)(n) of the Act. Defendants No.1 to 4 were not in a position to demonstrate that the findings recorded by the Appellate Court are perverse being based on no evidence or that they are contrary to evidence on record. Defendants No.1 to 4 were not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the Appellate Court. 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.

8. At this stage, Mr. Dani orally applies for stay of this order for a period of twelve weeks from today. Mr. Dani states that the applicants are in possession and they have neither created third party interest nor parted with the possession. They will hereafter neither create third party interest nor part with the possession. He further states that the applicants and all adult family members residing with them are ready and willing to give usual undertaking within two weeks from today. Learned Counsel for the respondent opposes said prayer.

9. Having regard to the fact that applicants desire to challenge this order before the Apex Court, in my opinion, ends of justice would be served by staying operation of this order for a period of twelve weeks from today subject to the applicants and all adult members residing with them giving usual undertaking to this Court within two weeks from today incorporating therein:

- (i) that they are in actual possession of the suit premises and nobody else is in possession;
- (ii) that they have so far neither created third party interest nor parted with the possession of the suit premises;
- (iii) that they will hereafter neither create third party interest nor part with the possession of the suit premises;
- (iv) that they will pay the arrears of rent, if any to the

respondents within two weeks from today; and

- (v) that in case the applicants are unable to obtain suitable orders within twelve weeks from today from the higher Court, they will deliver vacant and peaceful possession of the suit premises to the respondent.

10. In view thereof, notwithstanding dismissal of Civil Revision Application, this order shall remain stayed for a period of 12 weeks from today, subject to the applicants filing undertaking in the aforesaid terms within two weeks from today, with copy in advance to the other side. In case the applicants do not file undertaking in the above terms and/or arrears of rent are not paid within two weeks from today, the interim order shall stand vacated without further reference to the Court. List the application for reporting compliance after three weeks. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)