

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.332 OF 2014
WITH
CIVIL APPLICATION NO. 242 OF 2014 IN CRA/332/2014**

Shri Vilas gaurishankar Mhatre

..Applicant

Vs

Shrti Kuldeep Vinayak Darane
and Ors

.. Respondents

Mr. Yadunath Choudhari i/b Ms Veena V Shinde, Advocate for Applicant.

Ms. Deepa Kamath, Advocate for Respondents.

CORAM : R.G.KETKAR,J.

DATE : 10/10/2016

PC:

1. Heard Mr.Yadunath Choudhari, learned counsel for the applicant and Ms. Deepa Kamath, 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 22.1.2014 passed by the Appellate Bench of the Court of Small Causes at Mumbai in A-1 Appeal No.259 of 2008. 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 30.1.2008

passed by the learned Judge presiding over court Room no.10 of the Court of Small Causes at Mumbai in R.A.E.Suit No.37 of 2004. The Appellate Court directed the defendant to hand over vacant and peaceful possession of the premises admeasuring 300 sq.ft situate on the ground floor, 22-C, Darane House, Kranti Veer Raj Guru Marg, Girgaon, Mumbai 400 004 (for short, 'suit premises') to the plaintiffs within a period of two months.

3. Respondents/plaintiffs instituted suit, inter alia, contending that they are owners of the building known as 22C, Darane House, Kranti Veer Raj guru Marg, Girgaon, Mumbai (for short, 'suit building'). The suit building consists of ground and first floor. The ground floor admeasuring 600 sq.ft was given to Narayan Mhatre on tenancy basis for residential purpose. The first floor admeasures 600 sq.ft consisting of one room, kitchen and is in possession of the plaintiffs. The plaintiffs contended that the premises in their possession on the first floor admeasuring 600 sq.ft consists of kitchen and big hall. The suit premises is totally inadequate for occupying a large family consisting of eight members out of which one is married couple. There is no privacy to plaintiff no.3 as also plaintiffs no. 7 and 8 who are spinsters. The plaintiffs, therefore, claimed possession of the suit premises on the ground that they require the suit premises reasonably and bonafide for their own use and

occupation.

4. The defendant resisted the suit by filing written statement, inter alia, contending that the plaintiffs have suppressed the fact of surrendering 250 sq.ft out of 600 sq.ft by the defendant. The plaintiffs also did not approach the Court with clean hands. The defendant contended that the plaintiffs have suppressed acquisition of premises by plaintiff no. 3 in Devichaya Co-operative Housing Society. On the basis of the pleadings of the parties, the learned trial Judge framed the necessary issues. The learned trial Judge dismissed the suit. Aggrieved by that decision, the plaintiffs preferred Appeal which was allowed by the Appellate Court. It is against this order, the defendant has instituted the present proceedings.

5. In support of this Application Mr. Chaudhari reiterated the submissions advanced before the Courts below. He submitted that earlier Narayan Mhatre was inducted as a tenant in respect of the entire ground floor. In the year 1948, Narayan Mhatre expired. Heirs and legal representatives of Narayan requested the landlord to transfer tenancy in favour of Gaurishankar, eldest son of Narayan for convenience. In the year 1971, Gaurishankar shifted to some other premises. Mr. Chaudhari submitted that after shifting of Gaurishankar in the year 1971, Madhukar, other son of Narayan, became tenant. He further submitted that in

1982 area admeasuring 250 sq.ft was surrendered by Madhukar to the plaintiffs. After the death of Madhukar, his sons, viz. Kiran and Nitin requested the landlord for transferring tenancy in their favour. However, the plaintiffs refused to transfer rent receipt in their favour. In short, he submitted that Madhukar became tenant of the suit premises after Gaurishankar shifted elsewhere in 1971. However, after surrendering the said premises, plaintiffs converted it into commercial purpose instead of using it for residential purpose and subsequently even closed down business. He submitted that the said premises is still available to the plaintiffs.

6. Mr. Chaudhari further submitted that plaintiff no.7 is residing at Warick House as is evident from address shown on her bank passbook. Thus, the Court has to exclude the case of the plaintiff no.7 that she requires the suit premises reasonably and bonafide.

7. Mr. Chaudhari further submitted that the plaintiffs are in possession of outhouse which was earlier occupied by Eknath Ambedkar. He vacated the said outhouse in the year 1999. The plaintiffs thereafter inducted one Mr. Hindlekar in the said outhouse. Thus, in the first place, the plaintiffs are in possession of 250 sq.ft which was surrendered by Madhukar in the year 1982. Though outhouse occupied by erstwhile tenant Eknath

Ambedkar was vacated, the plaintiffs inducted Hindlekar. The requirement set up by the plaintiffs is, therefore, neither reasonable nor bonafide. The plaintiffs have suppressed material facts and also did not approach the courts with clean hands. He, therefore, submitted that the Appellate Court committed serious error in reversing the trial Court's judgment. He, therefore, submitted that the application requires consideration.

8. On the other hand, Ms Kamath supported the impugned order. She submitted that Narayan Mhatre was inducted as tenant. After his death in the year 1948, at the request of the defendant, tenancy was transferred in the name of Gaurishankar in the year 1951. Thus, Gaurishankar became tenant of the suit premises. She submitted that during the lifetime of Madhukar, after Gaurishankar shifted elsewhere in 1971, no request was made for transferring tenancy. In other words, Madhukar never became tenant of the suit premises and consequently his sons were not justified in requesting landlord to transfer tenancy in their name. She submitted that after considering the evidence on record and all relevant circumstances, the appellate Court has decreed the suit. While decreeing the suit the appellate Court has also considered the fact that plaintiff no.3 acquired premises in Devichaya Co-operative Housing society as also submission of the defendant that plaintiff no.7 has acquired premises in Warick

House as also induction of Hindlekar after erstwhile Ambedkar vacated the outhouse. She, therefore submitted that no case is made out for invocation of powers under section 115 of CPC.

9. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, the Appellate Court has decreed the suit on the ground that the plaintiffs require the suit premises reasonably and bonafide as contemplated by Section 16(1)(g) of the Maharashtra Rent Control Act, 1999 (for short, 'Act'). In paragraph 21, the appellate court noted that plaintiff no.1, mother of plaintiffs no.2 to 8, has expired and therefore her requirement that she finds difficult to climb staircase came to an end. The Court has to assess the requirement of plaintiffs no. 2 to 4, 7 and 8 only. In paragraph 22, the Appellate Court noted that the plaintiffs are in possession of the first floor admeasuring 600 sq.ft consisting of a big hall and kitchen. They have placed on record rough sketch Exhibit-7 showing the premises in their possession. The said fact was not disputed by the defendant.

10. In paragraph 23, the Appellate Court recorded surrender of 250 sq.ft by the defendant in the year 1982 and also noted that plaintiff no.2 carries on business in the suit premises. In paragraph 27, the appellate court noted that plaintiffs no. 2 and 4 are bachelors and plaintiffs no. 7 and 8 are spinsters residing

on the first floor consisting of a hall and kitchen. In other words, two brothers and two sisters are accommodating themselves in single hall. Plaintiff no. 2 is 51 years old, plaintiff no.4 is 39 years old, plaintiff no.7 is 47 years old, and plaintiff no.8 is 45 years old. After considering the aspect of privacy, the appellate court held that when the landlord says that he needs more accommodation, there is no scope for doubting the reasonableness of requirement. In paragraph 28, the Appellate Court noted that plaintiff no.3 got married in the year 2002 and shifted in premises of his friend situate in Devichaya Cooperative Housing Society in the year 2002. The Appellate court noted that had there been sufficient accommodation of the plaintiffs, plaintiff no.3 would not have shifted anywhere else. This itself indicates that plaintiffs no.2, 4, 7 and 8 are accommodating themselves only because they are unmarried.

11. The Appellate Court also recorded acquisition of outhouse in the year 1999 and induction of Mr Hindlekar in the said outhouse. The appellate Court has noted that the said outhouse admeasures 120 sq.ft and it is not self-contained premises. The appellate Court also considered submission of the defendant that plaintiff no.7 has premises at Warick House. After considering the evidence in paragraph 37, the appellate court observed that mere joint account of plaintiff no.7 with her cousin Mr Utkarsha

Varick is not sufficient to come to a conclusion that plaintiff no.7 is owner of the said premises. Mr Utkarsha Warick is residing in Warick House. Thus, after considering the evidence on record as also all relevant circumstances the appellate court decreed the suit. It, therefore, cannot be said that the appellate court failed to consider surrender of 250 sq.ft premises by the defendant in the year 1982 or that suppression of acquisition of premises by plaintiff no.3.

12. It is also not possible to accept the submission of the defendant that after Guarishankar shifted in 1971, Madhukar became tenant and after his death, his son became tenant. No material is produced on record to substantiate his submission. The defendant was not in a position to demonstrate that the findings recorded by the appellate below are perverse being based on no evidence or that they are contrary to the evidence on record. Defendant was not in a position to show that on the basis of material on record, no reasonable person would have come to the conclusions arrived at by the appellate Court. Merely because on the basis of evidence on record another view is possible that itself is no ground for invocation of powers under section 115 of C.P.C. Hence, Application fails and the same is dismissed.

13. At this stage, Mr. Chaudhari orally applies for stay of eviction decree for a period of 8 weeks from today. He states that Kiran Madhukar Mhatre is present in the Court. He is power of attorney holder of applicant Vilas Mhatre. Vilas Mhatre is presently residing in flat no. 305, 3rd floor, Kabir apartments, Jambo Darshan Co-op. Housing Society Ltd, Kol Dongari, Andheri (E) , Mumbai and is not residing in the suit premises. Presently Kiran and his mother Malti are residing in the suit premises and nobody else is residing in the suit premises. He assures that within two weeks from today, Applicant, Kiran and Malti will file usual undertakings in this Court, after giving advance copy to other side, incorporating therein:

- (i) that they are in possession of the suit premises and nobody else is in possession;
- (ii) that they have neither created any third party interest nor parted with possession;
- (iii) that they will hereafter neither create third party interests nor part with possession;
- (iv) that they will not apply for further extension of time;
- (v) that in case they are unable to obtain suitable orders from higher Court within 8 weeks from today, they will vacate and hand over vacant and peaceful possession of the suit premises to the respondent-plaintiff.

(vi) In the undertakings, it shall also be made clear that Vilas Gaurishankar Mhatre is not claiming any right, title and interest in the suit premises.

14. In view thereof, notwithstanding dismissal of C.R.A., the eviction decree shall not be executed for a period of 8 weeks from today subject to applicant, Kiran and Malti residing in the suit premises filing undertakings in the aforesaid terms within two weeks from today and serving copy in advance to other side. It is made clear that if the undertakings in the aforesaid terms are not filed within two weeks from today, the interim order shall stand vacated without further reference to Court.

15. In view of disposal of Civil Revision Application, Civil Application No. 242 of 2014 does not survive and the same is disposed of accordingly.

16. List the Application for reporting compliance after three weeks.

(R.G.KETKAR, J.)