

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1078/2016
IN
WRIT PETITION NO.2539/2016
IN
ORDER BELOW EXHIBIT 14
AND
ORDER BELOW EXHIBIT 11
IN
RAE SUIT NO.1626/2014

Smt. Vijeta Vijay Kamath

... Applicant

V/s.

Dinanath Janardan Walavalkar

... Respondent

Mr. J. J. Thakkar for the Applicants

Mr. Sachin P. Shetye for the Respondent.

CORAM: K.K. TATED, J.

DATED : MAY 5, 2016

PC. :

1. Heard the learned counsel for the parties. This civil application is made by the defendant tenant to stay further hearing of RAE Suit No.1626/2014 filed by the respondent plaintiff in Court of Small Causes for vacant and peaceful possession of the suit premises i.e. room No.8, ground floor, Yashoda Niwas, "D" Colony Road, Rajawadi, Vidyavihar (E), Mumbai – 400 077 for carrying out reconstruction as per section 16 of the Maharashtra Rent Control Act, 1996.

2. In that suit, the applicant defendant made application below exhibit 11 for rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 on the ground that the plaintiff failed and neglected to disclose the material facts constituting the cause of action in the plaint. That application below exhibit 11 was rejected by the Court of Small Causes vide order dated 16.01.2016 with cost of Rs.5000/-.

3. The defendant also made application below exhibit 14 for dismissal of the suit on the ground that the plaintiff failed to plead all material facts and particulars in the plaint and failed to issue notice u/s. 106 of the Transfer of Properties, 1882. The application below exhibit 14 was rejected by the trial court by order dated 16.01.2016. Hence, the petitioner defendant filed the Writ Petition under Article 227 of the Constitution of India, which was admitted by this court on 04.04.2016. Thereafter the defendant made the civil application.

4. Before considering the civil application on merits, it is to be noted that in the present proceedings, the Writ Petition was duly affirmed by the petitioner before Notary on 12.02.2016. Same was admitted by this court on 04.04.2016. Prayer made by the defendant for stay of further proceedings of RAE Suit No.1626/2014 was not granted at the time of admission of writ petition. Thereafter the defendant made civil application on 15.04.2016 though the same was duly affirmed before the Notary on 12.02.2016 i.e. before admission of writ petition.

5. The learned counsel for the applicant submits that as the Writ Petition filed by the defendant was already admitted by this court. Hence, pending the hearing and final disposal of the same, this Hon'ble Court be pleased to stay further proceedings in RAE Suit No.1626/2014 instituted by the plaintiff before the Court of Small Causes.

6. The learned counsel for the applicant / defendant submits that both the courts below failed to consider the application filed by the defendant under Order VII Rule 11 of the Code of Civil Procedure, 1908 as well as the application for dismissal of the suit for non disclosure of cause of action. He submits that both the courts below failed to consider that the plaintiff instituted the suit u/s. 16 of the Maharashtra Rent Control Act, 1999 (said Act) on the ground that the plaintiff required suit premises for demolition and for reconstruction in view of the dilapidated condition of the existing structure and other grounds. He submits that both the courts below failed to consider the fact that the plaintiff failed to give notice as per section 16(6) of the said Act. Therefore, the suit itself was not maintainable. He submits that the defendant raised several question of law in application under Order VII Rule 11 of the Code of Civil Procedure, 1908. Hence, pending the hearing and final disposal of the Writ Petition, this Hon'ble Court be pleased to stay further proceedings in RAE Suit No.1626/2014. He submits that if interim protection is not granted, irreparable loss and injury will be caused to them.

7. On the other hand, the learned counsel for the respondent

plaintiff vehemently opposed the civil application. He submits that in the Writ Petition, the defendant made specific prayer for stay of further proceedings in the suit instituted by the plaintiff before the Court of Small Causes. He submits that at the time of admission of the petition, though the defendant pressed for interim relief of stay to the further proceedings in the suit, same was not granted by this court. Hence, now the defendant is not entitled to claim same relief in the present civil application.

8. The learned counsel for the plaintiff submits that there are in all 45 tenants in the building known as Yashoda Niwas, Rajawadi “D” Colony Road, Vidyavihar (E), Mumbai – 400 077. He submits that except the petitioner / defendant and other 2 tenants, all other tenants are cooperating in the redevelopment project. He submits that the said building is in dilapidated condition. He submits that Mr. Kantilal. Lalpuria, Consulting Structural Engineer from “Total Solutions” carried out structural audit of the said building and prepared the report dated 09.06.2014. He submits that in the said report, the Structural Engineer has specifically stated that the building is in dilapidated condition and it requires immediate redevelopment. In support of this contention, he relies on following portion of the said report:

“We advice,

The defects stated in our attached report, if remain unattended, may cause damage to structural concrete in the long run. As of now, there is deficiency in structural concrete and distress on structural members.

Conclusion :

Looking to the condition of the building and visible major cracks and poor maintenance of the building needs major repairs but at this stage, structural repairing will not add substantial strength to the structural in its balance serviceable life.

The repairing will not stop further deterioration process entirely.

The balance serviceable life is unpredictable even after carrying out major structural repairs.

We advice

The repairing and further maintenance cost may prove disproportional with respect to balance service life. Thus we believe going into redevelopment of property is the best choice as repairs will be a very costly affair and a periodic one. Looking to the condition of structure and foundations of the building in our opinion the building should enter into redevelopment of the building.

We further advice that all future repairs & renovation work shall be carried out under guidance of a structural engineer.

Please feel free to contact us in case of further guidance on the matter above.”

9. The learned counsel for the respondent plaintiff submits that more than 70% tenants have agreed for redevelopment and executed the agreements. He submits that the defendant though attended the meeting with all other tenants at the time of finalizing redevelopment scheme, refused to execute the agreement for redevelopment without disclosing any reason. He submits that if stay is granted at this stage, irreparable loss will be caused to the plaintiff as well as more than 70% tenant those who executed the agreement for redevelopment. In

support of this contention, he relies on para 5, 6 and 8 of the plaint which reads thus:

“5. The Plaintiff states that the suit premises is reasonably and bona fide required by the Plaintiff u/s 16(1)(i) of Maharashtra Rent Control Act 1999 for immediate purpose of demolishing them and such demolition is required to be done for the purpose of erecting a new building. The Defendant is well aware that the suit building is quiet old building and the condition of the suit building is not very safe and it is beyond repairable condition thus it require reconstruction. The Plaintiff therefore put the proposal to the Defendant and other tenants of the suit building in the meeting held on 20/08/2012. All the tenants including the Defendant attended the meeting and gave positive response for reconstruction of the old building known as “Yashoda Niwas”. Accordingly on the second meeting held on 13/01/2013 the Plaintiff placed before the tenant the reconstruction proposal upon which lengthy discussion took place, on the issue regarding the area of the new premises to be allotted in lieu of the old premises to each tenant, and the tenant were agreed upon. The amount of compensation for temporary accommodation was also agreed and all other usual terms were agreed by the Defendant and other tenant. Accordingly the draft agreement was prepared and placed before the meeting held on 03/05/2013. All the tenants fairly admit the terms and conditions of the draft Agreement.

6. The plaintiff states that he explained all the terms to the defendant and other tenant and also called upon them that those who want draft copy can take the same. Every tenant had shown their willingness to sign the agreement. Accordingly the meeting was held on 18.08.2013 for execution of the agreement and on that day all the tenants remained present and they signed the agreement for permanent alternate accommodation before Notary Public. However, the defendant did not sign the said agreement for no reason. The defendant never disclose proper reasons for non-signing of an agreement though she received the draft copy of an agreement and take part in discussion of the subject matter in various meeting, still the defendant demanded separate offer letter which was furnished to them by letter dated 28.01.2014 to which the defendant gave absolutely baseless and irrelevant reply by letter

dated 08.02.2014. The copy of the letter dated 28.01.2014 and reply of the defendant dated 08.02.2014 is annexed herewith as **Exhibit-A**. The plaintiff further states that more than 70% tenants have executed an agreement for permanent alternate accommodation and they are time and again pressing the plaintiff to start development work at earliest possible so that the tenant should get a new premises with the benefit of extra area. However due to adamant approach of the defendant the plaintiff could not take up further steps to submit the reconstruction proposal to M.C.G.M. The plaintiff repeatedly requested to the defendant to hold a joint meeting with their Architect and Advocates to resolve the problem if any. But instead of discussing the matter, the defendant is interested to make baseless correspondence with mala fide intention to pass the time, so that reconstruction work should delay and she could take advantage of such situation by demanding and/or extracting unaccountable amount from the landlord or developer. The approach and conduct of the defendant clearly shows their ill motive. The plaintiff rely upon the letters correspondence between the plaintiffs and the defendant when produced.

8. The Plaintiff states that he has invested over Lac of rupees for appointment of Architect, Solicitor for drawing plan, statement and prepare entire proposal to submit to the M. C. G. M. for development of old building. Further since there is no special scheme in suburb area for development of the old building, the landlord can use the outside F. S. I. by way of T.D.R. which the Plaintiff requires to purchase from the market. The Plaintiff has already given an advantage of the fungible F.S.I. to all the tenants in the newly constructed building. The Defendant is the person who intent to obstruct development without any proper and sufficient cause or reason. In the circumstances, the Defendant render himself liable for eviction from the suit premises. ”

10. The learned counsel for the plaintiff submits that as on today, the building is in dilapidated condition. Same may collapse at any time. He submits that the plaintiff is ready and willing to provide all facilities to the defendant as they provided to other tenants. He

submits that in the interest of justice, this Hon'ble Court be pleased to reject the civil application. He submits that if any interim relief and/or ad-interim relief is granted to stay further proceedings in a suit filed by the plaintiff, irreparable loss will be caused to the plaintiff as well as more than 70% tenants.

11. I heard both sides at length. It is to be noted that, though the civil application was affirmed before the Notary on 15.02.2016, the same was filed on 15.04.2016 when this court declined to grant interim protection on the date of admission of the Writ Petition i.e. on 04.04.2016. In any case, in the present proceedings, the trial court has considered the application made by the defendant under Order 7 Rule 11 of the Code of Civil Procedure, 1908 as well as application for dismissal of the suit for non disclosure of material facts on its own merits. It is to be noted that, more than 70% occupants of the building have already executed the agreement for redevelopment with the plaintiff except the applicant and other 2 tenants opposing the redevelopment.

12. In any case, before passing the decree, the trial court has to consider whether the plaintiff is ready and willing to comply with the terms and conditions as stated in section 16 of the said Act. Apart from that the plaintiff is ready and willing to provide all facilities to the defendant as provided to other tenants. If further proceedings is stayed in the suit, more than 70% tenant will be affected. Considering these facts, I am of the opinion that the applicant - defendant failed and neglected to make out any case for grant of any relief in the civil application.

13. Hence, following order is passed:
- a. Civil application stands rejected with costs.
 - b. Considering the facts and circumstances of the case, hearing of RAE Suit No.1626/2014 is expedited.

(K.K. TATED, J.)