

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1077/2016
IN
WRIT PETITION NO.2538/2016
IN
REVIEW APPLICATION NO.1/2016
IN
REVISION APPLICATION NO.334/2015
IN
EXHIBIT 16
IN
RAE SUIT NO.539/794/2014

Dhananjay Yashwant Rege & Ors.
Through Lrs.

... Applicants

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 of the operation of the order dated 03.12.2015 passed in Revision Application No.334/2014 by the Appellate Bench of the Small Causes Court and order dated 29.01.2016 passed by the Appellate Bench of the Small Causes Court in Review Application No.1/2016.

2. The applicant defendant also prayed for stay of further hearing of RAE Suit No.539/794/2014 pending in C.R.No.12 of the Court of Small Causes at Mumbai, pending the hearing and final disposal of the Writ Petition.

3. The Writ Petition is admitted by this court on 04.04.2016. In the present proceedings the respondent plaintiff instituted RAE Suit No.539/794/2014 in Court of Small Causes, Mumbai against the defendant for vacant and peaceful possession of the suit premises i.e. room No.21, first floor, Yashoda Niwas, "D" Colony Road, Rajawadi, Vidyavihar (E), Mumbai – 400 077 on the ground that the building is in dilapidated condition and the plaintiff is in reasonable and *bona fide* requirement of the same under section 16 (1)(i) of the Maharashtra Rent Control Act, 1996 (said Act) for the purpose of erecting a new building.

4. In that suit, the defendant made application below exhibit 16 for rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 on the ground of non disclosure of cause of action in the plaint. That application was rejected by the Court of Small Causes vide order dated 02.11.2015. Thereafter the defendant made revision application No.334/2015 before the Appellate Bench of the Small Causes Court. The appellate court held that in view of the authority in the matter of *Bhartiben Shah & Anr. Vs. Gracy Thomas & Ors. 2013(2) Bom. C.R. Page 1 (Full Bench)*, the revision was not maintainable against the order dated 02.11.2015. Thereafter the

defendant made review application No.1/2016 under order XLVII for review of the order dated 03.12.2015 passed in Revision Application No.334/2015. The Appellate Bench of the Small Causes Court, by order dated 29.01.2016 held that the defendant failed to make out any case to review the order dated 03.12.2015 and dismissed the review application. Hence, the defendant filed the Writ Petition.

5. The Writ Petition is admitted by this court on 04.04.2016 without granting any interim relief. Thereafter the civil application is made by the defendant on 05.04.2016.

6. The learned counsel for the defendant submits that as the Writ Petition is already admitted by this court on 04.04.2016, hence by way of interim relief this Hon'ble Court be pleased to stay further proceedings in RAE Suit No.539/794/2014 pending the hearing and final disposal of the Writ Petition . He submits that the trial court erred in coming to the conclusion that the defendant failed to make out a case as per Order VII Rule 11 of the Code of Civil Procedure, 1908 for rejection of the plaint for non discloser of cause of action. He submits that the courts below failed to consider the fact that the plaintiff failed and neglected to comply with the mandatory provisions of section 16 of the said Act. He submits that as per the provisions of section 16 of the said Act, it is mandatory on the part of the plaintiff to give notice u/s. 16 (6) as well as to disclose their financial capacity to reconstruct the suit premises etc. He submits that without considering all these material facts, the trial court by order dated 02.11.2015 rejected the application made by the defendant below exhibit 16 under Order VII Rule 11 of the Code of Civil Procedure, 1908.

7. The learned counsel for the defendant submits that being aggrieved by the order below exhibit 16, the defendant made revision application No.334/2015 before the Appellate Bench of the Small Causes Court. He submits that the Appellate Bench of the Small Causes Court erred in coming to the conclusion that in view of the judgment of this court in the matter of ***Bhartiben Shah (supra)***, revision application under section 34(4) of the said Act is not maintainable.

8. The learned counsel for the defendant submits that even though the defendant made Review Application No.1/2016 under Order XLVII to explain how the revision is maintainable, same was not considered by the Appellate Bench of the Small Causes Court and dismissed the Review Application also. He submits that whether the revision is maintainable or not against the order dated 02.11.2015 passed by the trial court below exhibit 16 under Order VII Rule 11 of the Code of Civil Procedure, 1908 is a question of law and it is required to be decided at the time of final hearing of the Writ Petition. He submits that as the Writ Petition is already admitted by this court on 04.04.2016, pending the same, this Hon'ble Court be pleased to stay further proceedings in RAE Suit No.539/794/2014. He submits that during pendency of the present Writ Petition, if suit is decided on merits, in that case, the present petition may become infructuous. He submits that the defendant has good chance of success in the proceedings. Hence, this Hon'ble Court be pleased to allow the civil application in terms of prayer clauses (a) and (b).

9. 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.

10. 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.”

11. 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 6, 8 and 9 of the plaint which reads thus:

“6. 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.

*8. The Plaintiff states that because of the Defendants adamant approach and behaviour all other tenants are suffering much secondly the building is in bad condition at any moment accident may take place and any one can cause injuries from this accident. If at all, such accident or any mishap takes place the Defendants will have to be held responsible for the same. The Defendants also very well knows the condition of the suit building but he is interesting in extracting unaccountable amount from the landlord or builder. Therefore it is necessary to pass a decree for eviction against the Defendant. The copy of the draft Agreement supplied to the Defendant and in receipt thereof his acknowledge record. The copy of the draft agreement and acknowledgement of the Defendants is annexed herewith as **Exhibit C**. The Plaintiff rely upon signed*

agreement for permanent alternate accommodation of other tenants when produced.

9. *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.”*

12. 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. He submits that the Appellate Bench of the Small Causes Court rightly held that the revision application as filed by the defendant was not maintainable in view of the full bench judgment of this court in the matter of ***Bhartiben Shah & Anr (supra)***.

13. I heard both sides at length. It is to be noted that, when this court declined to grant interim protection on the date of admission of the Writ Petition i.e. on 04.04.2016, defendant made the civil application thereafter i.e. on 15.04.2016 for same relief. In any case,

in the present proceedings, the trial court has considered the facts of the application made by the defendant under Order 7 Rule 11 of the Code of Civil Procedure, 1908 and dismissed the same. 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.

14. 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 applicant 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.

15. It is to be noted that whether the revision is maintainable or not against the order passed by the trial court rejecting the application made by the defendant under Order VII Rule 11 of the Code of Civil Procedure, 1908 will be decided on merits, but considering the fact that more than 70% occupants have already executed redevelopment agreement with the plaintiff and the building is in dilapidated condition, I am of the opinion that if any relief is granted in favour of the defendant, that will affect more than 70% of the occupants of the building where the suit premises is situated. Hence, it is not possible in the interest of justice that the tenants those who have already executed

redevelopment agreement and as the building is in dilapidated condition to grant any relief in the civil application.

16. 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.539/794/2014 is expedited.

(K.K. TATED, J.)