

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 310 OF 2016

Shri Laxmidatta Nageshdatta Shukla ...Applicant

Versus

Shri Vikram Narayan Sane ...Respondent

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Mr.N.R. Bubna, Advocate for the Applicant.

Mr. M.D. Modgi, Advocate for the Respondent.

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CORAM : R. G. KETKAR, J.

DATE : 14th July, 2016

P.C.

1. Not on board. At the request of Mr.Bubna, taken up in the production board.

2. Heard Mr.N.R. Bubna, learned Counsel for the applicant and Mr.M.D. Modgi, learned Counsel for the respondent, at length.

3. By this application under Section 115 of Code of Civil Procedure, 1908 (for short, 'C.P.C.') the applicant, hereinafter referred to as the 'defendant', has challenged the judgment and decree dated 5.3.2015 passed by learned Civil Judge, Junior Division at Thane in Regular Civil Suit No.306/2014 as also the judgment and decree dated 20.1.2016 passed by learned

District Judge-7, Thane in Civil Appeal No.52/2015. By these orders, the Courts below decreed the suit filed by the respondent, hereinafter referred to as the 'plaintiff', under Sections 15, 16(1)(n) of the Maharashtra Rent Control Act, 1999 (for short, 'Act').

4. In support of this application, Mr. Bubna strenuously contended that the Courts below have committed serious errors and in particular the District Court committed serious error in passing the decree under Section 15 of the Act. The learned trial Judge held that the plaintiff did not establish that the defendant is in arrears of rent. He submitted that the plaintiff had issued demand notice dated 25.9.2013 at Exhibit-15. The defendant gave reply on 29.10.2013 at Exhibit-16. Along with the reply, the defendant had sent an amount of Rs.3356/- by way of cheque. The plaintiff accepted said cheque under protest and issued receipt stating therein that said amount is towards the rent from 1.2.2013 to 30.9.2013. He submitted that as the defendant had paid the entire dues along with reply, the Appellate Court was not justified in passing decree of eviction under Section 15 of the Act.

5. As far as the ground of non-user under Section 16(1)(n) of the Act is concerned, he submitted that the suit is instituted on 21.2.2014. The relevant period of six months would be from 22.9.2013 to 21.2.2014. The plaintiff did not produce any material to substantiate his plea of non-user. As the plaintiff did not discharge the burden, it was not incumbent upon the defendant to adduce positive evidence to substantiate user of the suit premises. He, therefore, submitted that the Courts below were not justified in passing the decree on the ground under Section 16(1)(n) of the Act.

6. On the other hand, Mr. Modgi supported the impugned orders. He submitted that after considering the evidence on record the Courts below have concurrently decreed the suit under Section 16(1)(n) of the Act. As far as ground of default under Section 15 is concerned, he has taken me through the order of the learned District Judge and in particular paragraphs-12 to 15 and submitted that the defendant has not complied the requirements of Section 15 of the Act. As the defendant failed to comply with those requirements, the learned District Judge was justified in allowing the cross-objection

preferred by the plaintiff.

7. I have considered rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. As far as the ground of non-user under Section 16(1)(n) of the Act is concerned, the learned trial Judge has considered this aspect from paragraphs-10 to 16. The Appellate Court has considered this ground in paragraphs-16 to 19. The Courts below considered the electricity bills produced by the plaintiff and in particular bills at Exhibits-45 to 51 as also the bills produced by the defendant at Exhibits-21 to 28 as also 33. After considering the material on record, the Courts below have held that the plaintiff has established the non-user of the suit premises. In paragraph-13, the learned trial Judge considered the admission given by the defendant in his cross-examination. The learned trial Judge disbelieved the evidence adduced by the defendant. As per the defendant all his family members are residing in his newly acquired premises. In paragraph-14, the learned trial Judge observed that two daughters of the defendant are residing in their matrimonial homes in Vrundavan Society. The plea raised by the defendant

that he is residing alone in the suit premises does not appear probable. As far as the District Court is concerned, the learned District Judge after considering the evidence and in particular electricity bills recorded that the bills show that the bills are for minimum amounts which are required to be paid to M.S.E.B..

8. Mr. Bubna submitted that the plaintiff did not establish non-user. At the same time, the defendant did not produce any electricity bills showing consumption for the period from 22.9.2013 to 21.2.2014. As far as the contention raised by Mr. Bubna that the identity card issued by Election Commission of India is concerned, in paragraph-18 the learned District Judge observed that those identity cards were issued in the year 1994. In paragraph-19, the learned District Judge also dealt with supply of gas-connection and observed that there is no evidence adduced by the defendant in that regard. The learned District Judge, therefore, held that the plaintiff has established non-user of the suit premises. As the Courts below have recorded concurrent findings of the fact after appreciating the evidence on record, I do not find that any case is made out for interference as far as this ground is concerned.

9. So far as the ground under Section 15 of the Act is concerned, the learned trial Judge did not pass the decree on this ground. The plaintiff preferred cross-objection. The learned District Judge has considered the ground under Section 15 of the Act from paragraphs-10 to 15 and recorded a categorical finding that the defendant did not comply the requirements of Section 15 of the Act by tendering due amount of rent within 90 days from service of summons. Defendant was not in a position to demonstrate that the said finding is contrary to evidence on record. I do not find that the learned District Judge has committed any error in that regard.

10. The defendant was not in a position to demonstrate that the findings recorded by the Courts below are perverse being based on no evidence or that they are contrary to evidence on record. The defendant was not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the Courts below. 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.

11. At this stage, Mr. Bubna orally applies for stay of this order for a period of eight weeks from today. He further states that the applicant is present in the Court. Upon taking instructions from him, he states that the applicant is in possession and he has neither created third party interest nor parted with the possession. The applicant will hereafter neither create third party interest nor part with the possession. He further states that the applicant and all the adult family members residing with him are ready and willing to give usual undertaking within two weeks from today. Learned Counsel for the respondent opposes said prayer.

12. Having regard to the fact that applicant desires 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 eight 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 plaintiff within two weeks from today; and
- (v) that in case the applicant is 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.

13. In view thereof, notwithstanding dismissal of Civil Revision Application, this order shall remain stayed for a period of eight weeks from today, subject to the applicant filing undertaking in the aforesaid terms within two weeks from today with copy in advance to the other side. In case the applicant does 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.)