

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Civil Revision Application NO. 194 OF 2008

Shri Harkishin Hemandas Bhatia ...Applicant

Versus

Suman Verma (since deceased)
through L.Rs. ...Respondents

With
Civil Application (ST) NO.20483 OF 2016
IN
Civil Revision Application NO. 194 OF 2008

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Mr.Amol B. Kharat i/b. Pilloi & Co. for the Applicant.
Mr. Harkishan Bhatia (applicant) is also present.

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CORAM : R. G. KETKAR, J.
DATE : 18th & 19th August, 2016

P.C.

1. Heard Mr. Amol Kharat, learned Counsel for the applicant, at length. During pendency of this application, sole respondent died leaving behind respondents No.1A to 1C. Pursuant to the order dated 7.8.2009, respondent No.1A was deleted. Office remark shows that the notice is served on respondents No.1B to 1C. However, none appears on their behalf.

2. By this application under Section 115 of Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicant, hereinafter referred to as the 'plaintiff', has challenged the judgment and decree dated 30.9.2006 passed by the Appellate Bench of the Small Causes Court at Bombay

(Bandra Branch) in Appeal No.19 of 2002. By that order, the Appellate Court allowed the appeal preferred by the respondent (since deceased) and quashed and set aside the judgment and decree dated 15.10.2001 passed by the learned Judge, presiding over Court Room No.34 of the Court of Small Causes at Mumbai in R.A.E. & R. Suit No.824/2666 of 1979 and dismissed the suit instituted by the plaintiff as also cross-objections filed by the plaintiff. The plaintiff had filed cross-objections as the learned trial Judge did not accept the grounds of eviction raised by him under Sections 13(1)(b) and 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, 'Act'). The learned trial Judge has decreed the suit only on the ground of arrears of rent as contemplated by Section 12 of the act.

3. The plaintiff has instituted the suit against the original defendant Suman Verma, the predecessor of the respondents, hereinafter referred to as the 'defendants' collectively for recovery of possession of Flat No.3, admeasuring about 500 sq. ft. on the ground floor in Dhanesh Kunj Co-operative Housing Society Ltd. (for short, 'suit premises'). Initially the suit premises was given by executing leave and licence agreement dated 1.1.1973 on monthly compensation of Rs.385/-. By virtue of amendment, the original defendant became statutory tenant in respect of the suit premises. The plaintiff contended that

the original defendant is in arrears of rent from 1.8.1976 till 31.12.1978 @ Rs.385/- per month amounting to Rs.11,165/-. The plaintiff had issued demand notice dated 28.12.1978. Subsequently the plaintiff issued demand notice dated 18.2.1979. The plaintiff contended that despite service of demand notice, the defendant did not comply the requisition contained therein and, therefore, he is entitled to eviction decree on the ground of arrears of rent.

4. The plaintiff also claimed possession of the suit premises on the ground that he requires the suit premises reasonably and bonafide for his own occupation; that the defendant has made permanent additions and alterations to the suit premises without consent and permission of the plaintiff.

5. Original defendant resisted the suit by filing written statement dated 19.3.1980. It was *inter alia* contended that as per the request and arrangement between the plaintiff and the defendant, the defendant had paid to Dinesh Kunj Co-operative Housing Society in all Rs.6360/- by and on behalf of the plaintiff which amount the plaintiff has to give credit to the defendant. It was contended that the plaintiff is holding Rs.1155/- as deposit under the leave and licence agreement dated 1.1.1973 the plaintiff is also liable to give credit of that amount to the defendant.

6. On the basis of the pleadings of the parties, the learned trial Judge framed necessary issues. Parties led evidence. After considering the evidence on record, the learned trial Judge decreed the suit only on the ground of arrears of rent as contemplated by Section 12 of the Act and did not accept the ground of bonafide requirement as also ground of carrying out additions and alterations of permanent nature without the consent of the plaintiff in writing as contemplated by Section 13(1)(g) and 13(1)(b) of the Act respectively.

7. Aggrieved by this decision, the original defendant preferred Appeal No.19/2002. The plaintiff preferred Cross-Objection No.1/2002 as the trial Court declined to pass the decree on the grounds under Sections 13(1)(b) and 13(1)(g) of the Act. By the impugned order, Appellate Court allowed the appeal preferred by the defendant and dismissed the cross-objection filed by the plaintiff. The Appellate Court dismissed the suit instituted by the plaintiff. It is against this decision, the plaintiff has instituted the present Civil Revision Application.

8. In support of this application, Mr. Kharat has taken me through the trial Court's judgment. The learned trial Judge has held that the demand notice dated 18.2.1979 was duly served on the defendant. The learned trial Judge also noted that during pendency of the suit,

order was passed on 24.4.1981 directing the defendant to deposit arrears of rent to the tune of Rs.15,950/- @ Rs.273/- per month as interim rent upto 31.8.1981 on or before 10.6.1981 and thereafter to continue to deposit rent @ Rs.275/- per month commencing from 20.7.1981. The learned trial Judge at that time gave adjustment of Rs.9,160/- claimed to have been paid by the defendant to the society. The learned trial Judge further observed that the defendant could not pay the amount within time. He, therefore, took out application bearing Interim Notice No.5358/1981 for condonation of delay in depositing arrears as per the order dated 24.4.1981. By order dated 25.3.1982, that notice was disposed of and the defendant was allowed to deposit the arrears of rent as also future rent within one month. The defendant was also directed to deposit the amount as per the earlier order dated 24.4.1981. The learned trial Judge further observed that the defendant failed in depositing arrears of rent. He took out interim notice No.1242/1987 for condonation of delay in depositing the arrears of rent in the Court. By order dated 18.9.1998 said Notice was disposed of permitting the defendant to deposit arrears of rent from August, 1990 till September, 1990 @ Rs.275/- within two weeks from the date of the order as also future rent on or before 10th day of month. The learned trial Judge observed that the defendant did not deposit the arrears of rent within time as per the directions

of Court and did not comply with the mandate as laid down under Section 12(3)(b) of the Act. The learned trial Judge also considered the chart at Exhibit-E produced by the plaintiff showing default in depositing the rent in the Court.

9. As against this, the Appellate Court observed in paragraph-11 that the plaintiff has claimed arrears from 1.8.1976 to 31.12.1978 @ Rs.385/- per month which comes to Rs.11,165/-. The defendant came with the case that he had paid Rs.6360/- to the society. In paragraph-12, the Appellate Court referred to the contention raised by the defendant in paragraph-2 of the written statement that the plaintiff is holding Rs.1,155/- as deposit and the defendant is entitled to get credit of that amount. The Appellate Court thereafter observed that just because there is a difference of Rs.5,000/-, the Court cannot draw inference that this difference amount is for the period of six months or more.

10. Mr. Kharat further submitted that the learned trial Judge observed that the defendant did not deposit the amount @ Rs.275/- per month and is not entitled to protection under Section 12(3)(b) of the Act. This aspect is not at all dealt with by the Appellate Court. In paragraph-15, without considering the findings recorded by the learned trial Judge in paragraph-11, Appellate Court observed that during pendency of the suit, the defendant was allowed to deposit amount @ Rs.275/- per month and

the defendant has established the fact that he has complied with the order of the Court. He, therefore, submitted that the order passed by the Appellate Court may be set aside by remitting the matter to Appellate Court for deciding the appeal de-novo.

11. Mr. Kharat further submitted that during pendency of this Civil Revision Application, the plaintiff has taken out Civil Application (St.) No.20483/2016 for bringing on record documents as also subsequent developments that took place during pendency of the appeal as also Civil Revision Application. He submitted that if the matter is remitted to the Appellate Court, the plaintiff will take out fresh application pending appeal on the similar lines as that of the present application.

12. I have considered the submissions made by Mr. Kharat. During pendency of Civil Revision Application original defendant expired and her L.Rs. were brought on record. As noted earlier, despite service none appears for respondent Nos.1B and 1C. Perusal of the trial Courts order and in particular paragraph-11 shows that the learned trial Judge has considered fixation of interim rent @ Rs.275/- per month. The learned trial Judge has categorically recorded a finding that the defendant did not deposit the arrears of amount within time as per the directions of the Court and did not comply the mandate as

laid down under Section 12(3)(b) of the Act. The learned trial Judge has also considered the chart produced at Exhibit-E. As against this in paragraph-15, the Appellate Court without considering the findings recorded by the learned trial Judge in paragraph-11 observed that the defendant has complied the order directing him to deposit interim rent @ Rs.275/- per month. The Appellate Court is the last fact finding Court. It was obligatory on the part of the Appellate Court to reappraise and reassess the evidence on record.

13. Apart from this, the Appellate Court was also not *prima facie* justified in observing in paragraph-12 that just because of the difference of Rs.5000/- the Court cannot draw inference that this difference amount is for the period of six months or more. The question whether the applicant is entitled to credit of Rs.1,155/- is also required to be reconsidered afresh. In view thereof, impugned order deserves to be set aside thereby restoring the appeal to the Appellate Court for *denovo* consideration. Hence, Civil Revision Application is disposed of in the following terms:

- [i] Impugned order dated 30.9.2006 passed by the Appellate Bench of the Small Causes Court at Bombay (Bandra Branch) in Appeal No.19 of 2002 is quashed and set aside. Appeal is restored to the file of Appellate Court.

- [ii] Liberty is reserved to the plaintiff to file application in the pending appeal for bringing the L.Rs. of defendant on record. If such application is filed, the Appellate Court will allow the same. After allowing the application, Appellate Court will issue notice to the legal representatives of the original defendant and after completing the service on L.Rs. of original defendant, will proceed to decide the appeal as early as possible and in any case within six months from completion of service on the L.Rs. of the original defendant.
- [iii] The plaintiff is also at liberty to file application for bringing subsequent developments that took place during pendency of the appeal and Civil Revision Application as also for production of documents on record. The same shall be considered on its own merits and in accordance with law.
- [iv] Office is directed to remit R & P forthwith to Appellate Court.
- [v] All contentions of the parties on merits are expressly kept open.
- [vi] Rule is made absolute in aforesaid terms with no order as to costs. Civil Application (St.) No.20483/2016 also stands disposed of.

(R. G. KETKAR, J.)