

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 607 OF 2015

Smt. Geeta Vasant Parkar And Ors. ...Applicants
Versus
Khemani Vishnu Rane And Ors. ...Respondents

With
Civil Application No.513 of 2015
IN
Civil Revision Application NO. 607 OF 2015

....
Mr. Ajit Kenjale, i/b. Abhijit V. Rane, Advocate for Applicants.
Mr. Sanskar Marathe, Advocate for the Respondents.
....

CORAM : R. G. KETKAR, J.

DATE : 27th June, 2016

P.C.

1. Heard Mr. Ajit Kenjale, learned Counsel for the applicants and Mr. Sanskar Marathe, learned Counsel for the respondents, at length.

2. By this application under Section 115 of Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicants have challenged the judgment and decree passed by learned Civil

Judge, Junior Division, Kankavli dated 16.10.2009 in R.C.S. No.24 of 2006 as also the judgment and decree passed by the learned Principal District Judge, Sindhudurg-Oros dated 5.3.2015 in Regular Civil Appeal No.127 of 2009. By these orders, the Courts below decreed the suit instituted by the respondents, hereinafter referred to as the 'plaintiffs' under Section 15 and 16(1)(g) of the Maharashtra Rent Control Act, 1999 (for short, 'Act').

3. In support of this application, Mr. Kenjale strenuously contended that according to the plaintiffs the arrears of rent were to the tune of Rs.1815/-. As against this, the defendants have deposited Rs.1836/- towards the arrears of the rent as per Exhibit-13 and they were depositing regularly the rent during pendency of the Suit. In other words, the defendants have complied the provisions of Section 15 of the Act. He, therefore, submitted that the Courts below were not justified in passing the decree under Section 15 of the Act.

4. As far as the ground of bonafide requirement under Section 16(1)(g) of the Act is concerned, the Courts below have accepted the claim made by the plaintiffs. He invited my

attention to the discussion of the District Court in paragraphs-16 to 22. As far as the question of comparative hardship is concerned, in paragraph-23, the learned District Judge referred to various rulings cited before him and recorded conclusion in paragraph-24. He submitted that the learned District Judge has not properly dealt with the question of comparative hardship. For all these reasons, he submitted that the application requires consideration.

5. On the other hand, Mr. Marathe supported the impugned orders. He submitted that as far as the ground under Section 15 of the Act is concerned, the Courts below recorded that the defendants did not comply the requirements laid down under Section 15(3) of the Act. In fact, during the course of hearing before the District Court the learned Advocate for defendant No.1 fairly conceded that till the date of argument of the appeal, the interest on arrears of rent was not deposited by defendant No.1 as well as from the date of filing of the appeal i.e. from 20.11.2009 till 20.2.2015. Defendant No.1 also did not take pains to deposit the rent of the suit premises regularly in the Appellate Court.

6. As far as ground of bonafide requirement under Section 16(1)(g) of the Act is concerned, he submitted that the younger son of defendant No.1 is qualified as B.A.M.S. and is running his clinic on the ground floor of the building owned by defendant No.1. He submitted that in paragraph-24, the learned District Judge recorded that sons of defendants No.1 and 2 are well settled and that defendants No.1 and 2 are in possession of their own premises. If the decree of eviction is not passed in favour of the plaintiff, his unemployed graduate son will would be definitely deprived of his opportunity to start his new business in the suit premises.

7. Mr. Marathe relied upon a decision of this Court in the case of ***Jagdish Prasad Gyaniram Agarwal v. Uttamchand alias Mohanlal Deepchand Chordiya (deceased) through his legal heirs, 2003 Bom.R.C. 215***, to contend that as defendant did not deposit interest on arrears of rent, Courts below were justified in passing decree under Section 15 of the Act.

8. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused

the material on record. As noted earlier, after appreciating the evidence on record the Courts below have concurrently decreed the suit under Sections 15 and 16(1)(g) of the Act. In particular in paragraph-15, the Appellate Court has dealt with compliance under Section 15(3) of the Act and came to the conclusion that the defendants have not complied with the requirement of depositing simple interest @ 15% per annum on the amount of arrears. In view of discussion in paragraph-15 of the District Court judgment, I do not find that the Courts below committed any error in passing the decree under Section 15 of the Act. The decision in the case of **Jagdish Agarwal (supra)** applies to the present case.

9. As far as ground under Section 16(1)(g) of the Act is concerned, from paragraph-16 onwards the learned District Judge has dealt with this aspect. After considering the evidence of PW-1 Khemaji Rane as also PW-2 Ganesh Rane, the learned District Judge held that PW-2 Ganesh Rane is an unemployed graduate and he wants to start his business in the suit premises which is in the market area. As against this, the younger son of defendant is B.A.M.S. Doctor and is running his

clinic on the ground floor of the building owned by defendant No.1. The learned District Judge accepted the requirement stated by the plaintiff, being both reasonable as well as bonafide. As far as the question of comparative hardship is concerned, in paragraph-24, the learned District Judge observed that if the decree of eviction is not passed in favour of the plaintiff his unemployed graduate son would be definitely deprived of his opportunity to start his new business in the suit premises.

10. After considering the entire record, I do not find that the Courts below have committed any error in passing the impugned orders under Section 16(1)(g) of the Act. Hence, Civil Revision Application fails and the same is dismissed. In view of disposal of C.R.A., Civil Application No.513/2015 for stay does not survive and the same is disposed of. Order accordingly.

(R. G. KETKAR, J.)