

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application (St.) NO. 14019 OF 2016

Shri Prakash Padmakar Pradhan

...Applicant

Versus

Mrs. Vanita Dhirajlal Ghelani (since Deceased)
through L.R.s

...Respondents

....

Mr. T.D. Deshmukh, Advocate for the Applicant.

Mr. Pravinchandra Shah, Advocate for the Respondents.

....

CORAM : R. G. KETKAR, J.

DATE : 13th OCTOBER, 2016

P.C.

1. Heard Mr. T.D. Deshmukh, learned Counsel for the applicant and Mr.Pravinchandra Shah, learned Counsel for the respondents, at length.

2. By this application under Section 115 of C.P.C., the applicant hereinafter referred to as the 'defendant' has challenged the judgment and decree dated 28.4.2008 passed by the learned Judge, presiding over Court Room No.16 of the Court of Small Causes at Bombay in R.A.E. & R. Suit No.1061/1654/2005 as also judgment and decree dated 6.4.2016 passed by the Appellate Bench of the Court of Small Causes at Bombay in (A-1) Appeal No.405/2008. By these orders, the Courts below decreed the suit

instituted by the respondents, hereinafter referred to as the 'plaintiffs' for recovery of possession of Unit No.A-44, 3rd floor of Royal Industrial Estate situate at 5-B, Naigaum Cross Road, Wadala, Mumbai – 400 031 (for short, 'suit premises') and directed the defendant to hand over vacant and peaceful possession of the suit premises to the plaintiffs as also to pay amount of Rs.1,66,768/- to the plaintiffs towards the amount of rent, maintenance charges and repair charges from 1.10.2002 to 30.9.2005, amongst other directions.

3. In support of this application, Mr.Deshmukh strenuously contended that the need set up by the respondent is neither reasonable nor bonafide. He has invited my attention to paragraphs-5 & 6 of the plaint as also paragraph-15A of the written statement. He submitted that the suit was instituted by Vanita Dhirajlal Ghelani. She had written a letter dated 25.6.2003 to the Honorary Secretary of Royal Industrial Estate Cooperative Society Ltd, Naigaon Cross Road, Wadala, Mumbai – 400 031 (for short, 'society') for N.O.C. for sale of the suit premises to M/s. Veer Offset. He submitted that the said fact is established by PW-3 Nilesh Parikh, Honorary Secretary of the society. He deposed that the society had received letter dated 25.6.2003 from the original plaintiff Vanita. He submitted that as the plaintiffs intended to sell the suit

premises way back in the year 2003, the need set up by them is unreasonable and malafide. Mr.Deshmukh has also invited my attention to evidence of PW-1 Jayshree Mehta and submitted that she is totally ignorant of the need set up by the plaintiffs. He submitted that plaintiffs nowhere came with the case that they intend to export the garments manufactured in the suit premises. Mr.Deshmukh has taken me through paragraphs-20 onwards of the Appellate Court order to contend that Appellate Court committed serious error in accepting the case made out by the plaintiffs that they require the suit premises reasonably and bonafide. He, therefore, submitted that the application requires consideration.

4. On the other hand, Mr. Shah supported the impugned orders. He submitted that after appreciating the evidence on record, the Courts below have concurrently held that the plaintiffs have established that their requirement is both reasonable as also bonafide. The Courts below also held that greater hardship will be caused to the plaintiffs in the event of refusing to pass decree of eviction in their favour. In fact the Appellate Court also held that the defendants are in possession of Units Nos.41 and 42 and where the business of M/s. Sales Pack and Empee Offset is going on, and, therefore, no hardship will be caused to the defendant in case eviction decree is

passed. He, therefore, submitted that no case is made out for invocation of powers under Section 115 of C.P.C.

5. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. In paragraph-5 of the plaint, the plaintiffs asserted that they require the suit premises reasonably and bonafide for themselves and members of original plaintiff Vanita's family, namely, daughters and grand-daughter. Plaintiff No.1a) Chandrika and plaintiff No.1c) Jayshree and grand-son Tanmay of original plaintiff Vanita (son of plaintiff No.1(c) Jayshree) want to start garment business of manufacture of shirts and trousers for exporting the same to U.S. And other countries as they have received positive response for the same from foreign countries and also other countries. The plaintiffs also relied upon letter dated 25.6.2005 received from Sansim Inc.

6. The defendant came with the case that the original plaintiff as well as plaintiffs intended to sell the suit premises and relied upon letter dated 25.6.2003 to the Honorary Secretary of the Society seeking NOC for sale of the suit premises to M/s. Veer Offset. Said fact is also established by PW-3 Nilesh Parikh, Honorary Secretary of the society. The Courts below have considered this circumstanc. In particular, the Appellate Court has referred

to this aspect in paragraph-21. Appellate Court referred to the correspondence, namely, notice dated 19.8.2005 sent by the plaintiffs and reply dated 3.9.2005 given by the defendant. In paragraph-3 of the reply, the defendant recorded that it was agreed between the parties that either the defendant will have 50% sale price of the suit premises and then only he will vacate the suit premises and he will have similar premises of his choice and respondent/landlord will be entitled to 50% sale price for transferring the ownership rights in respect of the suit premises in favour of the defendant/tenant. After considering the evidence as also correspondence exchanged between the parties, Appellate Court held that the stand taken by the defendant is concocted with a view to depriving the landlord from getting decree of eviction on the legitimate ground as available. Appellate Court thereafter proceeded to consider the ground of reasonable and bonafide requirement from paragraphs-22 to 24. Appellate Court also considered the fact that the defendant is in possession of Units-A-41 and 42. After considering the evidence on record, Appellate Court held that the plaintiffs have established that their requirement is both reasonable and bonafide and that no hardship will be caused to the defendant in case the eviction decree is passed. The findings recorded by the Courts below are based on appreciation of evidence on record. Defendant was not in a

position to demonstrate that the findings recorded by the Courts below are perverse being based upon no evidence or are contrary to evidence on record. Defendant was not in a position to demonstrate that no reasonable or prudent person would have arrived at the conclusions other than arrived by the Courts below. Merely because on the basis of evidence on record, another view is possible that itself is no ground for invocation of powers under Section 115 of C.P.C. In the result, Civil Revision Application fails and the same is dismissed.

(R. G. KETKAR, J.)

Deshmane (PS)