

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.307 OF 2016

Manuprasad Shivbandan Tiwari @ Brijwasi ... Applicant
Vs.
Mishribai Badriprasad Ashival (decd) Anandi
Banwarilal Buswala and others ... Respondents

Mr. Shashikant G. Surana for Applicant.
Mr. Kunal Bhanage for Respondents.

CORAM : R. G. KETKAR, J.
DATE : JUNE 14, 2016

P.C. :

Heard Mr. Surana, learned Counsel for applicant and Mr. Bhanage, learned Counsel for respondents at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908, applicant, hereinafter referred to as defendant, has challenged the judgment and decree dated 12.01.2012 passed by the learned Judge presiding over Court Room No.33 of the Court of Small Causes at Bombay (Bandra Branch) in R.A.E. & R. Suit No.753 of 1997 as also the judgment and decree dated 22.04.2016 passed by the appellate Bench of the Small Causes Court at Bandra, Mumbai in Appeal (A-1) No.12 of 2012. By these orders, the Courts below decreed the Suit instituted by the respondents, hereinafter referred to as plaintiffs, under Section 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Act').

3. In support of this Application, Mr. Surana submitted that initially, plaintiffs have instituted Suit invoking various grounds such as, (a) arrears of rent (Section 12); (b) defendant committing acts contrary to provisions of Section 108(o) of the Transfer of Property Act, 1882 and

violating the terms of tenancy and provisions of the Act; (c) the conduct of the defendant amounts to nuisance and annoyance to the adjoining neighbours [Section 13(1)(c)]; and (d) acquisition of suitable accommodation by defendants [Section 13(1)(l)]. The Suit was instituted in the year 1997. Nearly after six years, plaintiffs alleged that they require the suit premises reasonably and bonafide for their personal use and occupation. The learned trial Judge decreed the Suit only under Section 13(1)(g). Aggrieved by that decision, defendant preferred appeal. Before the appellate Court, defendant has brought on record that the plaintiffs are residing in eight rooms admeasuring 15' x 20', 10' x 20', 12' x 12', 12' x 12', 12' x 7', 12' x 7', 18' x 20' and 16' x 13'. In addition, it has come in the evidence of plaintiffs that they have constructed some premises in the suit property. Plaintiffs came with the explanation that the same are used for godown purpose and are not available for residential purpose. In paragraph 17, the appellate Court also recorded that plaintiff No.2 did not deny that he has acquired another premises during the pendency of the Appeal. He submitted that the said flat admeasuring 716.51 sq.ft. is situate at Thane. Thus, having regard to the fact that the plaintiffs are in possession of eight rooms plus godown as also a flat admeasuring 716.51 sq.ft. situate at Thane, it cannot be said that the need of the plaintiffs is both, reasonable as also bonafide. He, therefore, submitted that the learned appellate Court ought to have allowed the Appeal. As against this, the appellate Court repeatedly observed that the plaintiffs are in occupation of 1008 sq.ft. area. In other words, the appellate Court has excluded from consideration godown as also flat admeasuring 716.51 sq.ft. situate at Thane. He, therefore, submitted that application requires consideration.

4. On the other hand, Mr. Bhanage supported the impugned orders. He submitted that as far as the contention that the amendment is carried

out merely after 6 years by introducing ground under Section 13(1)(g) is concerned, the learned trial Judge has considered this aspect in paragraph 22. The learned trial Judge held that addition of ground of reasonable and bonafide requirement of the suit premises during the pendency of the Suit cannot be a ground for rejecting the plaintiffs' case. The Suit was instituted in the year 1997. At that time, children of plaintiffs were too small, and therefore, they may not be in need of the suit premises. The children of the plaintiffs have now grown up. The learned trial Judge further observed that the defendant did not deny that plaintiff No.3 has two sons and daughter and plaintiff No.2 has two sons and two daughters. The learned trial Judge also considered the members in the family of the plaintiffs as also area admeasuring 1008 sq.ft. in possession of the plaintiffs. The learned trial Judge accordingly decreed the Suit only on the ground under Section 13(1)(g) of the Act.

5. As far as the appellate Court is concerned, in paragraph 13, the appellate Court considered the submissions advanced on behalf of the defendant that plaintiffs are residing in eight rooms. The appellate Court observed that plaintiffs came with the case that they are in possession of four room admeasuring 1008 sq.ft. As far as contention of the defendant that plaintiffs have also constructed some premises in the suit property, the appellate Court observed that plaintiffs came with the categorical case that the same are used for godown purpose and therefore, are not suitable for residential use.

6. In paragraph 17, the appellate Court has noted that plaintiff No.2 did not deny that he acquired another premises during the pendency of the appeal. In paragraph 18, the appellate Court observed that the requirement of the plaintiffs is increasing as the children in the family have grown up. In paragraph 19, the appellate Court observed that

plaintiffs are in occupation of area of 1008 sq.ft. and family consists of growing children. Even if I accept submission of Mr. Surana that the appellate Court failed to take into account flat admeasuring 716.51 sq.ft. situate at Thane, it does not diminish the requirement of the plaintiffs. In paragraph 19, the appellate Court observed that the plaintiffs want to improve upon their present situation considering their increasing requirement. The case of the plaintiffs does not appear to be wishful thinking or a pretext to evict the defendant. In view thereof, I do not find that the courts below have committed any error in dismissing the Suit under Section 13(1)(g) of the Act. As far as question of greater hardship is concerned, both the Courts have held that defendant has acquired flat at Bhayander in the year 2007 and that he has not made any efforts to acquire the alternate premises. The Courts below have, therefore, held that greater hardship will be caused to the plaintiffs in the event of refusal of passing of eviction decree.

7. After considering the material on record as also having regard to the number of family members, I do not find that the Courts below committed any error in passing the impugned orders. Defendant was not in a position to show that the findings recorded by the Courts below are perverse being based on no evidence on record or that they are contrary to the evidence on record. Defendant was also not in a position to demonstrate that no reasonable / prudent person would have reached the conclusions arrived at by the Courts below. Hence, no case is made out for invocation of powers under Section 115 of C.P.C. Application fails and the same is dismissed.

(R. G. KETKAR, J.)