

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL REVISION APPLICATION NO. 348 OF 2015
WITH
CIVIL APPLICATION NO. 310 OF 2015 IN CRA/348/2015**

M. Antony alias M. Anthony ..Applicant

Vs

1.Vasant Ramchandra Bhandare
and Anr.

.. Respondents

Mr. Aditya Desai i/b Sachin R. Gelye, Advocate for Applicant.

Mr. Vishwajit S.Kapse i/b Harish R. Pawar , Advocate for
Respondents.

CORAM : R.G.KETKAR,J.
DATE : 08/06/2016

PC:

1. Heard Mr. Aditya Desai, learned counsel for the applicant and Mr.Vishwajit Kapse, learned counsel for the respondents at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicant has challenged the Judgment and decree dated 23.8.2010 passed by the learned Judge, presiding over Court Room No.10, of the Court of Small Causes at Mumbai in R.A.E. Suit No.1746/2566 of 2006 as also the Judgment and decree dated 9.5.2015 passed by Appellate Bench of the Small Causes Court at Mumbai in (A1) Appeal No.438 of 2010. By these orders, the Courts below decreed the suit instituted by the first respondent, hereinafter referred to as

'plaintiff', under section 16(1)(b) of the Maharashtra Rent Control Act,1999 (for short, 'Act') for recovery of possession of Flat no.8, First floor, Gurukripa building, situate on plot no.63-A, 4th road, Sion (E), Mumbai-400022 (for short, 'suit premises').

3. Plaintiff instituted suit against the applicant, hereinafter referred to as 'defendant', inter alia, contending that after deluge of 26.7.2005, Maharashtra Housing & Area Development Authority (for short, 'MHADA') declared Gurukripa building as a dangerous building among other buildings in Loksatta and other newspapers and called upon occupants to vacate the said building and to shift to the transit camp. This was followed by MHADA's letters dated 3.9.2005 and 6.9.2005 reiterating that the building was in a dangerous condition and calling upon all occupants to vacate the building immediately. The plaintiff further contended that he contacted Shri S.G.Patil, a senior consulting structural Engineer to inspect the condition of the building and give his opinion and report as to the exact condition of the building. Accordingly, on 26.8.2006, Shri Patil visited and inspected the building along with the plaintiff and gave his report dated 30.8.2006. The plaintiff alleged that when he visited the suit premises in occupation of the defendant, he found that the defendant had demolished the cooking platform in the kitchen and was using it as a bedroom and has constructed a permanent

cooking platform consisting of vertical support and stone top including kitchen. It is the case of the plaintiff that the defendant has constructed cooking platform in the balcony without his written permission as also without any authority.

4. Defendant resisted the suit, inter alia, contending that the suit is not maintainable and is bogus, vexatious, bad in law and is filed with ulterior motive with a view to harassing and pressurizing the defendant to part with monies or premises which he is rightfully holding as a tenant. The defendant denied the ground raised under section 16(1)(b) of the Act. He contended that neither the defendant nor the plaintiff had made any change in the structure of the suit premises for more than 35 years and that the plaintiff was fully aware of this fact and, therefore, has not given any details as to when the defendant has allegedly carried out additions and alterations.

5. On the basis of the pleadings of the parties, the learned trial Judge framed necessary issues. Parties led oral as well as documentary evidence. After considering the evidence on record, the Courts below decreed the suit. It is against these decisions, the defendant has instituted the present application.

6. In support of this Application, Mr. Desai strenuously contended that the Courts below committed serious error in relying upon photocopy of the map at Exhibit-30. In the first

place, the said map is in respect of ground floor and the suit premises is situate on the first floor. On the basis of the photocopy of Plan at Exhibit-30, the Courts below have passed decree under section 16(1)(b). Secondly, the said Plan is inadmissible in evidence. In fact, while passing the order dated 11.6.2009 on admissibility of documents below Exh.23, document no.5, copy of sanctioned plan was marked as Exhibit-30 subject to objection. While deciding the suit, the learned trial Judge did not deal with the objections raised by the defendant. Thirdly, the plaintiff also did not lay any foundation for leading secondary evidence. The plaintiff also did not call upon the Corporation to produce the authenticated sanctioned plan or also did not examine witness from the Corporation for proving the map at Exhibit-30. Thus, the Courts below committed serious error in passing the decree under section 16(1)(b) of the Act.

7. Mr. Desai has taken me through the evidence of the plaintiff's witnesses, namely, PW 1 plaintiff and in particular his cross examination. PW 1 admitted that he did not produce an authenticated copy of the Plan of the suit building approved by the Corporation. He further admitted that he does not have the authenticated copy of such plan in his custody. Witness volunteered that he has produced simple photocopy of the approved plan on record.

8. Mr. Desai invited my attention to the evidence of PW 3 Raju @ Balkrishna Madhav Wagle. He submitted that in the cross examination PW 3 admitted that since last 15 years, he is residing in Thane. He also admitted that there may be 10 years difference in the age of son of the defendant and his age. PW 3 deposed that he is using Flat no.5 for his office purpose. Mr. Desai submitted that the evidence of PW 3 is not believable.

9. Mr. Desai further submitted that the defendant came in possession of the suit premises in the year 1968 and the flat is in the same condition as it was taken in 1968. In other words, the defendant did not make any additions or alterations in the suit premises. He, therefore, submitted that Application requires consideration.

10. On the other hand, Mr. Kapse supported the impugned orders. He submitted that, after appreciating the evidence on record, the Courts below have concurrently held that the plaintiff has established ground under section 16(1)(b) of the Act.

11. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, the plaintiff has specifically come with the case that the defendant has demolished kitchen platform from the kitchen and has converted kitchen into bedroom. The defendant has constructed kitchen

platform in the balcony. The said fact is established by PW 2 S.G.Patil. Perusal of his evidence coupled with report at Exh.31 shows that PW 2 visited the suit premises. The report pertaining to the suit premises is to the following effect.

“Flat No.-08 Residence premises

1. Toilet - This is combined toilet. This is in good condition. The toilet above this flat is defectively constructed so as not to get anchored into the peripheral beams.
 2. Kitchen - The slab in the kitchen is in good condition. The kitchen is converted into bedroom. The original kitchen platform is removed.
 3. Living room - The slab is in good condition.
 4. Balcony - The balcony slab is damaged. The peripheral beams and slab show few cracks. New kitchen platform is constructed in balcony with sink towards shorter wall of the living room with window. “
12. PW 2 Shri Patil has proved the contents of the report at Exh.31. Perusal of the report in respect of the suit premises shows that the kitchen is converted into bed room and the original kitchen platform was removed. New kitchen platform is constructed in balcony with sink towards shorter wall of the living room with window. Apart from the evidence of PW 2 and the report Exhibit-31, even PW 3 Raju has substantiated the case made out by the plaintiff. It is not disputed that at one point of time PW 3 was residing in flat no.5 situate on First floor in Gurukripa building. Suit premises is flat no.8 situate on First floor

in Gurukripa building.

13. PW 4 Subhash Bhimaji Shirsat, Sub Engineer in the Corporation, prepared report Exh.40 after visiting and personal verification of the suit premises. Mr. Kapse submitted that the plaintiff has established ground under section 16(1)(b) of the Act. After considering the material on record, I do not find that the Courts below committed any error in decreeing the suit. Mr. Desai was not in a position to demonstrate that the findings recorded by the Courts below are perverse being based on no evidence or that on the basis of evidence on record, no reasonable person would have come to the conclusions arrived at by the courts below. In the light of the aforesaid discussion, I do not find that the applicant has made out any case for invocation of powers under section 115 of C.P.C. In the result, Application fails and the same is dismissed. In view of dismissal of Civil Revision Application, Civil Application No. 310 of 2015 for injunction does not survive and the same is disposed of.

14. At this stage, Mr. Desai orally applies for stay of this order for a period of eight weeks from today. He states that the applicant is in possession of the suit premises. The applicant has neither created third party interest nor parted with possession. The applicant will hereafter neither create third party interest nor part with possession and that the applicant has paid rent upto

date and he is not in arrears. Mr. Kapse states that the applicant has deposited compensation in the trial Court and the plaintiff may be permitted to withdraw that amount. Mr. Desai has no objection. In view thereof, the plaintiff is permitted to withdraw the amount so deposited by the defendant in the trial Court unconditionally.

15. Mr. Desai assures that within two weeks from today, the applicant and all adult family members residing with him will file usual undertaking in this Court, after giving advance copy to other side, incorporating therein:

- (i) that they are in possession of the suit premises and nobody else is in possession;
- (ii) that they have neither created any third party interest nor parted with possession;
- (iii) that they will hereafter neither create third party interests nor part with possession;
- (iv) that they will clear arrears of rent, if any, within 2 weeks from today;
- (v) that they will not apply for further extension of time;
- (vi) that in case they are unable to obtain suitable orders from higher Court within 8 weeks from today, they will vacate and hand over vacant and peaceful possession of the suit premises to the respondents.

16. Hence, subject to the applicant giving undertaking in the aforesaid terms and serving copy in advance to other side, notwithstanding dismissal of Civil Revision Application, this order shall remain stayed for a period of eight weeks from today. It is made clear that if within two weeks from today the undertaking in the aforesaid terms is not filed, the interim order shall stand vacated without further reference to the Court.

17. List Civil Revision Application for compliance on 21.6.2016.

(R.G.KETKAR, J.)