

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.350 OF 2016

Anwar Ali	...	Applicant
Vs.		
Mohamed Farooque Chauhan and others	...	Respondents

Mr. Prakash V. Dhopatkar for Applicant.
Mr. Akshay Petkar for Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : JULY 22, 2016

P.C. :

Heard Mr. Dhopatkar, learned Counsel for applicant and Mr. Petkar, learned Counsel for respondent No.1 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 30.04.2011 passed by the learned 9th Civil Judge, Junior Division, Thane in Regular Civil Suit No.316 of 2008 as also the judgment and decree dated 18.04.2016 passed by the learned District Judge-10, Thane in Civil Appeal No.121 of 2011. The learned trial Judge decreed the Suit under Section 16(1)(n) of the Maharashtra Rent Control Act, 1999 (for short 'Act') though respondent No.1-plaintiff also had raised grounds of default and bonafide requirement under Sections 15 and 16(1)(g) of the Act respectively. The learned District Judge has decreed the Suit on the ground of non-user under Section 16(1)(n) as also under Sections 15 and 16(1)(g) of the Act.

3. In support of this Application, Mr. Dhopatkar has strenuously contended that the Courts below committed serious error in decreeing the Suit under Section 16(1)(n) of the Act. He has taken me through the

impugned orders and in particular, paragraphs 14 to 23 dealing with ground under Section 16(1)(n) of the Act. He submitted that in fact, on 23.03.2007, defendant had made complaint for changing meter as its consumption was showing 'faulty'. He, therefore, submitted that merely relying upon the electricity bills showing Nil consumption, the learned trial Judge was not justified in accepting the ground under Section 16(1)(n) of the Act.

4. Mr. Dhopatkar further submitted that the learned District Judge while decreeing the Suit under Section 16(1)(g) of the Act has merely observed in paragraph 16 that it is a sweet choice of the landlord to select the premises for his residence / business and as such, there is none of the business either of the tenant or the Court to direct the suitability. Thus the plaintiff has averred that the suit premises is reasonably and bonafidely required by him. If eviction decree is not passed in his favour, greater hardship will be caused to him. He submitted that except paragraph 16, there is no discussion as far as ground of bonafide requirement under Section 16(1)(g) of the Act is concerned. He, therefore, submitted that application requires consideration.

5. On the other hand, Mr. Petkar supported the impugned orders. He submitted that the learned trial Judge as also the learned District Judge have concurrently held that plaintiff has established the ground of non-user and therefore, no case is made out for invocation of powers under Section 115 of C.P.C.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As far as the ground of non-user under Section 16(1)(n) is concerned, the learned trial Judge has discussed this aspect from paragraph 14 to 23. In paragraph 16, the learned trial Judge has noted

the electricity consumption for the month of November 2007, December 2007, January 2008, February 2008, March 2008 as also April 2008. The Suit is instituted on 03.05.2008. In all these months, the electricity consumption was shown as 'Nil'. In paragraph 22, the learned trial Judge has considered the complaint dated 23.03.2007 made by the defendant to M.S.E.B. After considering the material on record, the learned trial Judge observed that in the bills dated 27.02.2007 and 16.10.2010, remark of 'faulty' was shown. In respect of other bills, no such remark was found. The learned trial Judge, therefore, discarded the case of the defendant. In paragraph 23, the learned trial Judge also noted that the suit premises is situate at Farooq Manzil and the summons was served on the defendant at the address of Ibrahim Mansion.

7. As far as the District Court is concerned, the learned District Judge has considered ground under Section 16(1)(n) of the Act from paragraphs 14 to 16. The learned District Judge noted that there is inconsistency between the pleadings and evidence of the defendant's witnesses.

8. Thus, the Courts below, after appreciating the evidence on record, have concurrently decreed the Suit under Section 16(1)(n) of the Act. Defendant was not in a position to demonstrate that the findings recorded by the Courts below are perverse being based on no evidence or that they are contrary to the evidence on record. Defendant was also not in a position to demonstrate that reasonable or 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.)