

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No.7506 of 2016
[Converted from Civil Revision Application NO. 531 OF 2015]

Smt. Leelavati Devram Yadav
And Ors

...Applicants

Versus

Shri. Digambar Kashinath Dantale
(since Deceased, through LRs.) and Anr

...Respondents

....

Mr.G.S. Godbole, Senior Advocate i/b. S.C. Wakankar, Advocate
for the Applicants.

Mr. V.S. Gokhale, Advocate for the Respondents.

....

CORAM : R. G. KETKAR, J.

DATE : 27th June, 2016

P.C.

1. Heard Mr. G.S. Godbole, learned Senior Counsel for the applicants and Mr.V.S. Gokhale, learned Counsel for respondents No.1a to 1d and 2, 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 the learned Judge, Small Causes Court, Pune dated 11.2.2010 in Civil Suit No.49/2007 as also the judgment and decree passed by the learned District Judge-15, Pune dated 20.3.2015 in Civil Appeal

No.246/2010. By these orders, the Courts below decreed the suit instituted by the respondents, hereinafter referred to as the 'plaintiffs', under Sections 16(1)(e), 16(1)(g) and 16(1)(n) of the Maharashtra Rent Control Act, 1999 (for short, 'Act'). In view of Section 7 of C.P.C., Mr. Godbole seeks leave to convert this Civil Revision Application into Writ Petition under Article 227 of the Constitution of India. Leave as prayed for is granted. Amendment shall be carried out forthwith.

3. In support of this Petition, Mr. Godbole submitted that perusal of the points framed by the learned District Judge would indicate that the learned District Judge framed only one point, namely, whether the judgment/order in Civil Suit No.49/2007 dated 11.2.2010 is liable to be set aside. He relied upon Order 41 Rule 31 of C.P.C. to contend that the Appellate Court being the last fact finding Court has to frame necessary points that arise from the controversy between the parties. The learned District Judge has committed breach of provisions of Order 41 Rule 31 of C.P.C.

4. Mr. Godbole further submitted that the plaintiffs have claimed eviction on the ground of non-user under Section 16(1)

(n) of the Act. In paragraph-5 of the plaint, the plaintiffs asserted that from 1.7.2006, the premises in question are not used continuously for a period of six months preceding the date of filing suit. The suit premises are locked. The suit premises is let out to defendants No.1 to 3 for carrying on business. However, no business is carried out in the suit premises. He submitted that in order to substantiate this ground, the plaintiffs examined Pradip Shete, Assistant Accountant in Sub-Division, M.S.E.B. Rastapeth, Pune. Mr. Godbole has taken me through the evidence of this witness and submitted that the plaintiffs did not establish the ground of non-user. He alternatively submitted that the defendants have established the reasonable cause for non-user of the suit premises as the property was in a dilapidated condition and it was not in a habitable condition. In fact the defendants moved an application for carrying out necessary repairs to Pune Municipal Corporation. The defendants have examined Rangnath Taskar, Junior Engineer working in Pune Municipal Corporation. Mr. Godbole, therefore, submitted that even if the Court comes to the conclusion that the plaintiffs have established non-user as contemplated by Section 16(1)(n) of the Act nonetheless the

reasonable cause is established by the defendants.

5. As far as the ground of sub-letting is concerned, he submitted that during pendency of the suit, the plaint was amended. In paragraph-12A, the plaintiffs asserted that defendants No.1 to 3 entered into partnership deed on 16.10.2006 and have transferred the suit premises to defendant No.4 Dinesh. In fact no business was carried out as per the partnership deed dated 16.10.2006 and the said partnership deed is camouflage and was entered into only with a view to giving a go bye to the provisions of the Act. He has taken me through the oral evidence of the plaintiffs and defendants witnesses in that regard. He relied upon following decisions:

[i] ***Helper Girdharbhai v. Saiyed Mohmad Mirasaheb Kadri and others., (1987) 3 SCC 538*** to contend that the tenant becoming a partner of a partnership firm and allowing the firm to carry on business in the demised premises while himself retaining legal possession does not amount to subletting.

[ii] ***Celina Coelho Pereira v. Ulhas Mahabaleshwar***

Kholkar, (2010) 1 SCC 217 to contend that inducting a partner or partners in the business or profession by a tenant by itself does not amount to sub-letting. If the tenant is actively associated with the partnership business and retains the control over the tenancy premises with him, may be along with partners, the tenant may not be said to have parted with possession.

6. As far as the ground of bonafide under Section 16(1)(g) of the Act is concerned, in paragraphs-6 and 7 of the plaint, the plaintiffs have set up the requirement of plaintiff No.1 and his son and of plaintiff No.2 respectively. As far as the judgment of the District Court is concerned, the learned District Judge has considered this ground in paragraph-36. The learned District Judge however has not considered the question of comparative hardship. For all these reasons, he submitted that the petition requires consideration.

7. On the other hand, Mr.Gokhale has taken me through the orders passed by the Courts below as also the evidence of DW-1 and submitted that from perusal of the cross-examination of DW-1, it would be evident that defendants No.1 to 3 are not

carrying out any business in the suit premises.

8. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. Mr. Godbole relied upon Order 41 Rule 31 of C.P.C. to contend that the Appellate Court did not comply with the requirements laid down therein. I do not find any merit in this submission for more than one reason. In the first place, perusal of the order of the learned District Judge shows that though the learned District Judge framed only one point as indicated earlier, he has discussed each ground of eviction, namely, Section 16(1)(n), 16(1)(e) and 16(1)(g) of the Act. Secondly, in the case of ***Parimal v. Veena alias Bharti, (2011) 3 SCC 545*** the Apex Court observed in paragraphs-25 and 26 thus :

25. Order 41 Rule 31 CPC provides for a procedure for deciding the appeal. The law requires substantial compliance of the said provisions. The first appellate Court being the final court of facts has to formulate the points for its consideration and independently weigh the evidence on the issues which arise for adjudication and record reasons for its decision on the said points. The first appeal is a valuable right and the parties have a right to be heard both on question of law and on facts. (vide: ***Moran Mar Basselios Catholicos v. Mar***

Poulose Athanasius, AIR 1954 SC 526; **Sukhpal Singh v. Kalyan Singh**, AIR 1963 SC 146; **Santosh Hazari v. Purshottam Tiwari**, AIR 2001 SC 965; **Madhukar v. Sangram** AIR 2001 SC 2171; **G. Amalorpavam v. R.C. Diocese of Madurai**, (2006) 3 SCC 224; **Shiv Kumar Sharma v. Santosh Kumari**, (2007) 8 SCC 600; and **Gannmani Anasuya and Ors. v. Parvatini Amarendra Chowdhary**, AIR 2007 SC 2380).

26. The first appellate Court should not disturb and interfere with the valuable rights of the parties which stood crystallised by the trial Court's judgment without opening the whole case for rehearing both on question of facts and law. More so, the appellate Court should not modify the decree of the trial Court by a cryptic order without taking note of all relevant aspects, otherwise the order of the appellate Court would fall short of considerations expected from the first appellate Court in view of the provisions of Order 41 Rule 31 CPC and such judgment and order would be liable to be set aside. (Vide **B. V. Nagesh v. H.V. Sreenivassa Murthy**, (2010) 13 SCC 530.)

9. Applying the tests laid-down by the Apex Court to the present case, I do not find any merit in the submission. Perusal of the order passed by the learned District Judge shows that after framing points, the learned District Judge dealt with ground under Section 16(1)(n) from paragraphs-24 to 31. The learned District Judge dealt with ground of unlawful sub-letting under Section 16(1)(e) from paragraphs-32 to 35. After considering the evidence on record, the Appellate Court confirmed the trial Court's decision.

10. As far as the ground of non-user as contemplated under Section 16(1)(n) of the Act is concerned, the Courts below relied upon the evidence of the plaintiffs as also evidence of Pradip Shete from M.S.E.B.. This witness produced the light bill and khata extract at Exhibits-58 and 59. He deposed that from 17.6.2006 onwards the meter reading could not be taken. From August, 2006 onwards, amount of Rs.480/- towards the electricity bill was paid which is on the basis of average consumption. The bill was paid upto 13.6.2007 only. There is no reading taken from July, 2006 to May, 2007 and the suit premises is under lock.

11. After appreciating the evidence on record, the Courts below have concurrently found that the suit premises was closed under lock since 1.7.2006. In particular, the Appellate Court has considered the ground of non-user from paragraphs-24 to 28 as also in paragraph-31. After considering the evidence on record as also the orders passed by the Courts below, I do not find that the Courts below committed any error in passing decree of eviction under Section 16(1)(n) of the Act.

12. Mr. Godbole submitted that assuming without admitting that the plaintiffs have established the ground of non-

user, the defendants have established the reasonable cause. He submitted that the property was in a dilapidated condition and was not in a habitable condition. The defendants moved an application for carrying on necessary repairs. He also relied upon the deposition of Mr. Rangnath Taskar, Junior Engineer working in Pune Municipal Corporation who was examined by the defendants.

13. I do not find any merit in this submission. In paragraphs-13 to 15, after considering the evidence on record, the learned trial Judge held that the defendants miserably failed to prove that there was reasonable cause for non-user of the suit premises. Insofar as the District Court is concerned, the learned District Judge has considered this aspect from paragraphs-26 to 30 and held that the suit property was not in a dilapidated condition and that it was not suitable for human habitation. Thus after appreciating the evidence on record, the Courts below have concurrently held that the defendants did not establish reasonable cause for non-user of the suit premises. I do not find that the Courts below committed any error in that regard.

14. As far as the ground of unlawful sub-letting under

Section 16(1)(e) of the Act is concerned, perusal of evidence of DW-1 shows that in cross-examination he deposed that the defendants No.1 to 3 were out of State of Maharashtra when the written statement was filed in the suit. He denied that while submitting additional written statement defendants No.1 to 3 were out of State. It has come on record that during pendency of the suit, defendant No.1 expired. DW-1 deposed that defendant No.3 was already married and she has no concern with the business. In paragraph-4 he admitted that perfumes, deodorants and cosmetic products were available in the suit premises and the said position existed before he became partner in the business in the suit premises. He further admitted that the business with respect to jewellery was not at all being carried out at the suit premises at any time. Though he deposed that defendant No.1 if feels well will appear before the Court for giving evidence, defendant No.1 did not enter into the witness box. The Courts below after appreciating the evidence on record have held that the plaintiffs have established the ground of unlawful sub-letting under Section 16(1)(e) of the Act. In particular, in paragraphs-32 to 35 the learned District Judge has dealt with this ground. In paragraph-34, after considering

the evidence on record, the learned District Judge categorically recorded a finding that the admissions given by DW-1 during the course of cross-examination are sufficient to disbelieve the theory put forth by the defendants about execution of the partnership and about entry of defendant No.4 as a partner in the suit premises. In other words, the learned District Judge held that the partnership deed was a camouflage. After considering the evidence of the parties, I do not find that the learned District Judge committed any error in passing the decree on the ground of unlawful sub-letting under Section 16(1) (e) of the Act.

15. Mr. Godbole relied upon the decisions in ***Helper Girdharbhai (supra)*** and ***Celina Coelho Pereira (supra)***. In the case of ***Helper Girdharbhai (supra)***, the Apex Court held that whether a genuine partnership existed of which the tenant claiming to be a partner is a mixed question of law and fact. In the case of ***Celina Coelho Pereira (supra)***, the Apex Court held that if the purpose of the partnership is ostensible and a deed of partnership is drawn to conceal the real transaction of sub-letting, the Court may tear the veil of partnership to find out the real nature of the transaction entered into by the tenant.

16. In the present case, defendant No.4 entered the witness box. In other words, none on behalf of the tenant entered the witness box and newly inducted partner defendant No.4 entered the witness box.

17. After appreciating the evidence on record, the Courts below have concurrently held that the partnership deed was a camouflage. The learned trial Judge has considered this aspect from paragraphs-17 to 22. The learned District Judge has considered this aspect in paragraphs-33 to 35. In paragraph-34, the learned District Judge observed that the admissions brought on record in the evidence of DW-1 are material and are sufficient to disbelieve the theory put forth by the defendants about execution of the partnership and about entry of defendant No.4 in the suit premises as a Partner.

18. As far as the ground of bonafide requirement under Section 16(1)(g) of the Act is concerned, perusal of the order of the learned District Judge shows that in paragraph-36, the learned District Judge held that the plaintiffs have established their requirement is both reasonably as well as bonafide. However, the question of comparative hardship is not at all dealt with by the learned District Judge. Mr. Gokhale was not in a

position to show any discussion made by learned District Court on the question of comparative hardship. He was not in a position to support decree under Section 16(1)(g) of the Act passed by the District Court. I am satisfied that the Courts below were justified in passing the decree under Section 16(1)(e) and 16(1)(n) of the Act.

19. The defendants were 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 evidence on record. The defendants were not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the Courts below. Hence no case for invocation of powers under Article 227 of the Constitution of India is made out. Petition fails and the same is dismissed. In the circumstances of the case, there shall be no order as to costs.

(R. G. KETKAR, J.)