

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.833 OF 2014
WITH
CIVIL APPLICATION NO.464 OF 2014

Nandlal Pritipal Kahar	...	Applicant
Vs.		
Ibrahim Hussein Nadaf	...	Respondent

Mr. Rakesh K. Agrawal for Applicant.

CORAM : R. G. KETKAR, J.
DATE : JUNE 21, 2016

P.C. :

Heard Mr. Agrawal, learned Counsel for applicant at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), the applicant, hereinafter referred to as defendant, has challenged the judgment and decree dated 30.01.2013 passed by the learned Judge, presiding over Court Room No.34 of the Court of Small Causes at Bombay in R.A.E.& R. Suit No.310/815 of 1995 as also the judgment and decree dated 01.04.2014 passed by the appellate Bench of the Court of Small Causes at Mumbai (Bandra) in A-1 Appeal No.32 of 2013. By these orders, the Courts below decreed the Suit instituted by the respondent, hereinafter referred to as plaintiff, only under Section 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Act').

3. Plaintiff instituted Suit against the defendant for recovery of possession of room No.4 in Nadaf Chawl situate at Shantaram Pada, Khot Kuwa Road, Malad (East), Mumbai 400 064 (for short 'suit premises') alleging that defendant failed and neglected to pay monthly rent to the plaintiff from 01.09.1977 to 30.11.1994. On 21.11.1994,

plaintiff issued demand notice through Advocate under Section 12(2) of the Act and terminated the tenancy. Defendant accepted the statutory notice dated 21.11.1994. He, however, failed and neglected to comply with the requisites contained therein.

4. Defendant filed written statement inter alia contending that the residence of the defendant is wrongly and mischievously described as “Nadaf Chawl”. The said chawl is known as “Manik Hussein Nadaf Chawl” owned by plaintiff's brother Manik Hussain Nadaf. In paragraph 5, defendant denied that he was / is the tenant of the plaintiff in respect of the suit premises at a monthly rent of Rs.20/- and specifically came with the case that Manik Hussein Nadaf is the owner and landlord of the chawl. Defendant is the tenant of Manik Hussein Nadaf at monthly rent @ Rs.15/- since the inception of tenancy in 1974. Sometimes, plaintiff used to collect the rent in his capacity as a rent collector. In paragraph 6, defendant asserted that he is the tenant of Manik Hussein Nadaf at a monthly rent @ Rs.15/- and he is paying the rent regularly. He has paid rent to Manik Hussein Nadaf up-to-date.

5. In support of this Application, Mr. Agrawal submitted that Manik Hussein Nadaf was examined by the defendant as D.W.2. He invited my attention to the cross-examination of D.W.2 wherein suggestion was given to that witness that Suit No.351/1984 by Manik Hussein Nadaf against the plaintiff in City Civil Court, Mumbai in respect of declaration of ownership rights and the Suit was dismissed on 17.02.1999. Mr. Agrawal submitted that the Suit was dismissed in default on 17.02.1999 and till date, the same is not restored. He has taken me through the impugned orders. He submitted that as defendant was paying rent to Manik Hussein Nadaf regularly, it cannot be said that he is a willful defaulter. Apart from that, the rent Court cannot go into

the question of ownership of the suit premises. He, therefore, submitted that the Courts below committed error in decreeing the Suit.

6. I have considered the submissions advanced by Mr. Agrawal. I have also perused the material on record. It is not in dispute that plaintiff had issued demand notice dated 21.11.1994 calling upon the defendant to pay arrears of rent from 01.09.1977 to 30.11.1994. It is equally not in dispute that defendant received this notice. The defence set up by the defendant is that he was regularly paying rent to Manik Hussein Nadaf as he is the landlord and owner of the suit premises. The Courts below have considered this defence. In particular, the trial Court has considered this aspect from paragraph 6 onwards. In paragraph 13, the trial Court referred to Manik Hussein Nadaf instituting Civil Suit No.351 of 1984 in the City Civil Court against the plaintiff in respect of ownership of suit chawl / property. In paragraph 14, the trial Court referred to evidence of P.W.1 as also rent receipt at exhibit 23/4 as also notice of motion exhibit-26 filed by Manik Hussein Nadaf against the plaintiff.

7. The trial Court also considered admission of D.W.1 during the course of cross-examination that he has not paid rent of the suit premises to the plaintiff even after receipt of demand notice dated 21.11.1994 at exhibit-43. He has also not deposited the amount of arrears of rent in the Court even after service of the suit summons upto date. The trial Court, therefore, held that defendant is in arrears of rent @ Rs.20/- per month from the period from 01.09.1977 to 30.06.1995 i.e. for 214 months. After considering this evidence on record, the trial Court held that plaintiff is the landlord and defendant is the tenant in respect of the suit premises.

8. As far as the appellate Court is concerned, from paragraph 5 onwards, the appellate Court has considered whether plaintiff has established the ground of default as also whether plaintiff is the landlord of the suit premises. After considering the documents produced by the plaintiff as also evidence of the defendant, in paragraph 12, the appellate Court observed that rent Courts are not empowered to decide the title in respect of the property but incidental inquiry to the title can be gone into. The appellate Court referred to Short Cause Suit No.351 of 1984 and order dated 19.03.1986 passed in that Suit. In paragraph 13, the appellate Court referred to the photocopy of the order passed by the City Civil Court on 17.02.1999 dismissing the Suit. Mr. Agrawal fairly stated that the Suit was dismissed in default on 17.02.1999 and is not restored till date. In paragraph 15, the appellate Court considered the documentary evidence produced by the plaintiff. D.W.2 Manik Hussein Nadaf deposed that plaintiff was collecting rent on his behalf, on his instructions. The appellate Court observed that defendant did not produce any material on record to substantiate that D.W.2 had authorized plaintiff to collect rent on his behalf. In paragraph 19, the appellate Court also dealt with the assertions made by the defendant in the written statement that at one point of time, plaintiff was collecting rent from him as rent collector on behalf of D.W.2.

9. After considering the evidence on record, the appellate Court held that plaintiff is the landlord of the suit premises and that, even after service of demand notice, defendant did not comply with that notice and pay the rent. Thus, after appreciating the evidence on record, the Courts below have concurrently held that defendant was a willful defaulter. Defendant also did not substantiate his plea that plaintiff was collecting the rent in his capacity as rent collector on behalf of D.W.2 Manik Hussein Nadaf. Defendant was not in a position to demonstrate that the

findings recorded by the Courts below are based on no evidence or that they are contrary to the evidence on record. Defendant was also not in a position to demonstrate that on the basis of evidence on record, no reasonable or prudent person would have reached the conclusions arrived at 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. No case is made out by the defendant No.4 for invocation of powers under Section 115 of C.P.C. Application fails and the same is dismissed.

10. In view of the dismissal of the C.R.A., nothing survives in Civil Application No.464 of 2014 for stay of the order and the same is disposed of. Order accordingly.

(R. G. KETKAR, J.)

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