

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.722 OF 2014

Navi Mumbai Sports Association ... Applicant
Vs.
Mr. G. H. Khatri, Sole Proprietor of
M/s. G. H. Khatri and Company ... Respondent

WITH
CIVIL REVISION APPLICATION (ST.) NO.18222 OF 2016

Mr. G. H. Khatri, Sole Proprietor of
M/s. G. H. Khatri and Company ... Applicant
Vs.
Navi Mumbai Sports Association ... Respondent

Mr. Y. S. Jahagirdar, Senior Advocate a/w. Mr. Suraj S. Shah a/w. Mr. P. Rathod for Applicant in C.R.A.No.722 of 2014 and for Respondent in C.R.A. (St.) No.18222 of 2016.

Mr. P. K. Dhakephalkar, Senior Advocate a/w. Mr. D. V. Deokar, Mr. Pinakin Modi and Mr. Dhiwesh Parikh i/b. M/s. Parimal K. Shroff & Co. for Respondent in C.R.A.No.722 of 2014 and for Applicant in C.R.A.(St.) No.18222 of 2016.

CORAM : R. G. KETKAR, J.
DATE : JULY 27, 2016

P.C. :

Heard Mr. Jahagirdar, learned Senior Counsel for applicant in C.R.A.No.722 of 2014 and for respondent in C.R.A.(St.) No.18222 of 2016 and Mr. Dhakephalkar, learned Senior Counsel for respondent in C.R.A.No.722 of 2014 and for applicant in C.R.A.(St.) No.18222 of 2016 at length. Rule. Learned Counsel for respondents waive service. At the request and by consent of the parties, Rule is made returnable forthwith and the Applications are taken up for final hearing.

2. C.R.A.No.722 of 2014 is instituted by the original plaintiffs challenging the judgment and decree dated 25.02.2014 passed by the learned District Judge-9, Thane in Civil Appeal No.419 of 2012. By that order, the learned District Judge allowed the appeal preferred by the defendant and

quashed and set aside the judgment and decree dated 05.11.2012 passed by the learned 2nd Joint Civil Judge Junior Division, Vashi in Regular Civil Suit No.77 of 2004. The learned District Judge remitted the Suit to the trial Court with direction to frame issue of hardship within the ambit of Section 16(2) of the Maharashtra Rent Control Act, 1999 (for short 'Act') by affording opportunity of leading evidence to both the parties.

3. C.R.A. (St.) No.18222 of 2016 is instituted by the defendant challenging the judgment and decree dated 25.02.2014 passed by the learned District Judge-9, Thane in Civil Appeal No.419 of 2012 to the extent of remitting the Suit with direction to the trial Court to frame issue of hardship.

4. In support of plaintiffs' case, Mr. Jahagirdar has taken me through the trial Court's judgment. In particular, he submitted that the learned trial Judge has considered the requirement pleaded by the plaintiffs as contemplated by Section 16(1)(g) of the Act. The learned trial Judge has also considered the evidence adduced by the plaintiffs. He submitted that the learned trial Judge has discussed and analyzed the evidence adduced by the parties and recorded findings. In particular, the learned trial Judge also considered the admission of the defendants that affidavit was prepared by his Advocate not as per his instructions. The learned trial Judge, therefore, observed that the entire examination-in-chief lost its evidentiary value. After considering the evidence on record, the learned trial Judge recorded findings in paragraphs 26 and 27 and held that plaintiffs proved that their requirement is reasonable and bonafide.

5. As far as the question of comparative hardship is concerned, the learned trial Judge has considered this aspect in paragraphs 30 and 31. In paragraph 32, the learned trial Judge recorded a finding that defendants did not adduce positive evidence to show that the requirement is malafide and it was with an oblique motive to recover the premises for letting it on higher rent. It was also held that there is no evidence that plaintiffs have other alternate premises for their use and occupation. Whereas it has come on record that defendants have other premises for their business, and therefore,

no hardship will be caused to the defendants if asked to vacate the premises. Moreover, the fact that plaintiffs is a Trust and require the premises, itself, is sufficient to establish entitlement of the plaintiffs for possession of the suit premises.

6. Mr. Jahagirdar has taken me through the impugned order of the learned District Judge and submitted that though the learned District Judge has referred to the evidence of the plaintiffs' witnesses, the learned District Judge has not discussed and analyzed the evidence of those witnesses. He further submitted that the learned District Judge has not complied the provisions of Order 41, Rule 31 of C.P.C. He has relied upon the decision of the Apex Court in the case of ***H. Siddiqui Vs. A. Ramalingam, (2011) 4 SCC 240*** and in particular, paragraphs 20 to 22 thereof. Mr. Jahagirdar submitted that the learned District Judge negated the ground of eviction under Section 16(1)(g) of the Act, nonetheless, he remitted the matter with direction to the trial Court to frame the issue of hardship and permit the parties to adduce evidence. Once the learned District Judge negated the ground of bonafide requirement, there was no question of remitting the matter with direction to frame issue of hardship under Section 16(2) and permitting the parties to lead evidence. The entire exercise was in futility.

7. On the other hand, Mr. Dhakephalkar partly supported the impugned order and submitted that the learned District Judge was not justified in remitting the matter to the trial Court once having held that plaintiffs did not establish bonafide requirement. He submitted that the learned District Judge has also discussed the evidence adduced by the parties and ultimately, in paragraph 21 recorded a categorical finding that no believable evidence appears to have been adduced by the plaintiffs to show that it is difficult for them to use the first floor for no amenities and facilities are provided. Mr. Dhakephalkar submitted that in fact plaintiffs came with the case that they require the suit premises on the ground floor for using it as card room for members who are senior citizens. He submitted that in fact, it has come on record that lift facility is available, and therefore, the ground set up by the

plaintiffs is malafide. He submitted that the Application filed by the plaintiffs deserves to be dismissed and Application preferred by the defendants deserves to be allowed.

8. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. In the case of **H. Siddiqui** (*supra*), the Apex Court has dealt with the scope of Order 41, Rule 31 of C.P.C. In paragraph 20, the Apex Court has observed that the first appellate Court has to strictly adhere to the provisions contained in Order 41, Rule 31 of C.P.C. and has to formulate the points. In paragraph 21, it was observed thus,

“21. The said provisions provide guidelines for the appellate court as to how the court has to proceed and decide the case. The provisions should be read in such a way as to require that the various particulars mentioned therein should be taken into consideration. Thus, it must be evident from the judgment of the appellate court that the court has properly appreciated the facts/evidence, applied its mind and decided the case considering the material on record. It would amount to substantial compliance of the said provisions if the appellate court's judgment is based on the independent assessment of the relevant evidence on all important aspect of the matter and the findings of the appellate court are well founded and quite convincing. It is mandatory for the appellate court to independently assess the evidence of the parties and consider the relevant points which arise for adjudication and the bearing of the evidence on those points. Being the final court of fact, the first appellate court must not record mere general expression of concurrence with the trial court judgment rather it must give reasons for its decision on each point independently to that of the trial court. Thus, the entire evidence must be considered and discussed in detail. Such exercise should be done after formulating the points for consideration in terms of the said provisions and the court must proceed in adherence to the requirements of the said statutory provisions. (Vide: Thakur Sukhpal Singh v. Thakur Kalyan Singh & Anr., AIR 1963 SC 146; Girijanandini Devi & Ors. v. Bijendra Narain Choudhary, AIR 1967 SC 1124; G. Amalorpavam & Ors. v. R.C. Diocese of Madurai & Ors., (2006) 3 SCC 224; Shiv Kumar Sharma v. Santosh Kumari, (2007) 8 SCC 600; & Gannmani Anasuya & Ors. v. Parvatini Amarendra Chowdhary & Ors., AIR 2007 SC 2380).”

9. Perusal of the above extracted paragraph shows that from the judgment of the Apex Court, it must be evident that the Court has properly appreciated the facts / evidence, applied its mind and decided

the case considering the material on record. It would amount to substantial compliance with the provisions of Order 41, Rule 31 if the appellate court's judgment is based on the independent assessment of the relevant evidence on all important aspects of the matter and the findings of the appellate court are well founded and quite convincing. It is mandatory for the appellate court to independently assess the evidence of the parties and to consider the relevant points which arise for adjudication and the bearing of the evidence on those points. Being the final court of fact, the first appellate court must not record mere general expression of concurrence with the trial court's judgment rather it must give reasons for its decision on each point independently to that of the trial court. Thus, the entire evidence must be considered and discussed in detail. Such exercise should be done after formulating the points for consideration in terms of the said provisions and the court must proceed in adherence to the requirements of the said statutory provisions.

10. Applying the tests laid down to the facts of the present case and perusal of the order passed by the learned District Judge, it cannot be said that the learned District Judge has complied with the requirement laid down in paragraph 21 of the Apex Court judgment, extracted hereinabove. More so when the appellate Court has reversed the trial Court's judgment. In paragraphs 13 and 14, the learned District Judge has referred to the evidence of Sumangal Phadnis, who is a General Secretary of the plaintiff-Trust. The learned District Judge however, did not record any finding either accepting or discarding evidence of this witness. In paragraph 17, the learned District Judge referred to evidence of Vikram Dhumal, Architect. Though the learned District Judge observed that being the Architect, he is a technical person and best witness knowing the structural design and requirement, no finding is recorded either accepting or discarding evidence of that

witness. In paragraph 21, the learned District Judge has observed thus,

“21. His witness Naresh Mule has given valuation report at Exh.91. The provisions of Section 16(g) of Maharashtra Rent Control Act, 1999 prescribe that if the premises are reasonably and bonafidely required by the landlord and in the present case, trustees of Public Charitable Trust, eviction may be sought. It is pertinent to note that subsection 2 of Section 16 prescribes that no decree of eviction shall be passed on the ground specified in Clause - g of Subsection-1, if the court is satisfied that having regard to all the circumstances, greater hardship would be caused by passing the decree than by refusing to pass. In this context of the matter, plaintiffs Navi Mumbai Sports Association is having sufficient premises Plaintiffs made oral grievances. No believable evidence appears that it is difficult for them to use that on the first floor for no amenities and facilities are provided. The issue of greater hardship was not framed by the learned trial Judge, though he observed that there would have no hardship. In this behalf, the possession of plaintiff in his name of property in the name of other family members would be a matter of controversy whether tenant has occupied alternate accommodation. The eviction is not sought on the ground of acquisition of alternate suitable accommodation by the tenant.”

11. Perusal of the above paragraph shows that the learned District Judge has referred to Section 16(2) of the Act for considering question of greater hardship. It is in that context, the learned District Judge observed that no believable evidence appears that it is difficult for the plaintiffs to use the first floor and that there are no amenities and facilities provided. In my opinion, the said finding is not attributable to the ground of reasonable and bonafide requirement as contemplated by Section 16(1)(g) of the Act. In fact, this is inconsistent with the discussion that is to be found in paragraphs 22 and 23. In paragraph 22, the learned District Judge observed that defendants sought amendment of issues and issue on the question of hardship was not framed and the said issue goes to the root of the matter. In paragraph 23, the learned District Judge observed that “it is equally true that by issues parties are guided what sort of evidence would be required, if they are represented by the Advocate.” It is in that context, the learned District Judge remitted the matter to the trial Court with direction to frame issue of greater hardship as per Section 16(2) of the Act and permitted the parties to adduce evidence.

12. In my opinion, the approach of the learned District Judge, to say the least, was perverse. In the first place, the learned District Judge has not discussed the evidence of the witnesses examined by the plaintiff as indicated earlier. The learned District Judge has neither recorded any finding in respect of some of the witnesses either accepting or discarding their evidence. Secondly, once the learned District Judge negated the ground of bona fide requirement, remanding the matter to the trial Court for deciding the issue of comparative hardship was really an empty formality. In my opinion, the learned District Judge did not discuss and analyze the evidence while answering the issue of reasonable and bona fide requirement. In view thereof, the impugned order cannot be sustained, and as such, is liable to be set aside thereby restoring the Appeal. The learned District Judge will discuss the evidence and bear in mind the decision of the Apex Court in the case of **H. Siddiqui** (*supra*) and more particularly paragraph 21, extracted hereinabove. Hence, the following order:

- a. The judgment and decree dated 25.02.2014 passed by the learned District Judge is quashed and set aside and Civil Appeal No.419 of 2012 is restored to the file of the learned District Judge;
- b. Parties agree that they will appear before the learned District Judge on 01.08.2016, and for that purpose, no fresh notice be issued to them;
- c. The learned District Judge is requested to decide the Appeal within 3 months from the date of appearance of the parties;
- d. The learned District Judge will decide the Appeal, uninfluenced by the observations made herein;
- e. All contentions of the parties on merits are expressly kept open.
- f. Rule is made absolute in the aforesaid terms in both the Applications with no order as to costs.

(R. G. KETKAR, J.)