

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.1049 OF 1999
WITH
CIVIL APPLICATION NO.13 OF 2006

Harishchandra Anant Naik and another ... Applicants
Vs.
Baburao Bhiwaji Suryawanshi and another ... Respondents

Ms Archana K. Shirsekar for Applicants.

CORAM : R. G. KETKAR, J.
DATE : JUNE 06, 2016

P.C. :

Heard Ms Shirsekar, learned Counsel for applicants at length.
None appears for respondents.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908, the applicants have challenged the judgment and order dated 17.09.1996 passed by the Competent Authority, Konkan Division, Bombay (for short 'Competent Authority') in Case No.50 of 1994. By that order, the Competent Authority rejected the application made by the applicants under Section 13-A2 of the Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947 (for short 'Act') for recovery of possession and compensation in respect of Flat No.F-1, Ground Floor, Rishikesh Evershine Nagar, Malad (West), Mumbai - 400 064 (for short 'suit premises').

3. By order dated 16.01.1997, Civil Revision Application was admitted by issuing Rule and Rule on interim relief was made returnable on 17.02.1997. By order dated 11.07.1997, the Court granted interim

relief in terms of prayer clause (b) on usual terms after recording that respondent No.2 is served. None appeared for respondent No.1.

4. During the pendency of this C.R.A., applicants have taken out Civil Application No.13 of 2006. In paragraph 6, it is asserted that on or about 05.04.2001, applicant No.2 found that the door latch of the suit premises was broken and the suit premises was vacant. The door of the suit premises was also in broken condition and particularly removed from the frame of the door. By letter dated 05.04.2001, applicants reported the situation to the Senior Inspector attached to Malad Police Station with a request to make Panchnama of the premises. Mr. Thakur, Inspector of Malad Police Station along with the Constable visited the suit premises and recorded the statement of watchman of the Society and complaints made by the applicants.

5. In paragraph 7, it is asserted that on 22.04.2001, applicants attended the General Body Meeting of the Society. In spite of complaint to the police station, no efforts were made to trace the whereabouts of respondent No.1. Applicants got the door repaired and with the consent of the office bearers of the Society took vacant possession of the suit premises on or about 22.04.2001 being the owners of the suit premises. The said fact was recorded by the applicants by their letter dated 24.04.2001 addressed to the Senior Inspector of Police, Malad Police Station. The applicants started occupying the suit premises being the owners of the flat.

6. In paragraph 11, it is asserted that respondent No.1 is in arrears of compensation amounting to Rs.2,28,000/- upto March, 2001. In paragraph 12, it is asserted that applicants are not aware about the whereabouts of respondent No.1.

7. No reply is filed opposing the Application. None appears for respondent No.1. Having regard to the fact that the applicants have taken possession of the suit premises as far back as on 22.04.2001 and whereabouts of the respondent No.1 are not known, in my opinion, no useful purpose will be served by keeping the application pending. Reserving liberty to the applicants to take appropriate proceedings for recovery of compensation from the respondent No.1, C.R.A. is disposed of as the relief of possession claimed by the applicants in the proceedings under Section 13-A2 of the Act no longer requires consideration. Hence, Rule is made absolute in the aforesaid terms with no order as to costs.

8. In view of the disposal of the C.R.A., nothing remains in Civil Application No.13 of 2006 and the same is disposed of accordingly. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab