

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.438 OF 2015
WITH
CIVIL APPLICATION NO.286 OF 2015
IN
CIVIL REVISION APPLICATION NO.438 OF 2015

Jawahar Balkaran Yadav And Anr	...Applicants
<i>Versus</i>	
Ramganesha Mukut Singh	...Respondent

....
Ms. Priti S. Shah, Advocate for the Petitioner.
Mr.Omprakash Pandey, Advocate for the Respondent.
....

CORAM : R. G. KETKAR, J.

DATE : 07th SEPTEMBER, 2016

P.C.

1. Heard Ms.Priti Shah, learned Counsel for the applicants and Mr.Omprakash Pandey, learned Counsel for the respondent, at length.

2. By this application under Section 115 of Code of Civil Procedure, 1908 [for short, 'CPC'], the applicants have challenged the judgment and decree dated 7.3.2013 passed by the Appellate Bench of the Small Causes Court at Bandra, Mumbai in Appeal No.228/2010. By that order, Appellate Court dismissed the appeal preferred by the applicants, hereinafter referred to as the defendants, and confirmed the judgment and decree dated 30.6.2011 passed

by the learned Judge, presiding over Court Room No.33 of the Court of Small Causes at Bombay, Bandra Branch in R.A.E. & R. Suit No.393/902 of 1996.

3. The respondent, hereinafter referred to as the 'plaintiff', had instituted suit against the defendants *inter alia* for recovery of possession of stable admeasuring 15' X 25' known as Ramganesht Singh Mukut Singh Stable, Bhoot Bungalow Compound, Subhash Road, Vile Parle (East), Mumbai – 400 057 [for short, 'suit premises'] by invoking grounds under Sections 12, 13[1][b], 13[1][c] and 13[1][k] of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 [for short, 'Act']. The plaintiffs adduced evidence in support of their case. The defendants however did not participate in the suit after filing of the written statement. They did not cross-examine the plaintiffs' witness. They also did not lead evidence. By judgment and decree date 30.6.2010, the learned trial Judge decreed the suit. Instead of filing application under Order IX Rule 13 of C.P.C., the defendants preferred substantive appeal under Section 96 of the Act before the Appellate Court. By the impugned order, Appellate Court dismissed the appeal. It is against these orders, the defendants have instituted present C.R.A..

4. In support of this application, Ms. Shah submitted that there is no relationship of landlord and tenant between the parties. The plaintiffs are not the landlords of the suit

premises so as to maintain eviction suit against the defendants.

5. Ms. Shah heavily relied upon the order dated 9.8.2012 passed by this Court in Writ Petition No.2276/2012. She submitted that after considering the material on record, this Court observed in paragraph-17 that the respondents herein instead of requesting the Court to pass decree in terms of L.C. Suit No.2833/1984 filed purshis for withdrawal of the suit. Learned trial Judge dismissed the suit instituted by the respondents as withdrawn. In other words, the respondents did not get their right established from Civil Court as per the order dated 14.3.2002 passed by this Court in Writ Petition No.5495/2001.

6. Ms. Shah further submitted that the names of the respondents are deleted from Record of Rights. The respondents have not produced a single rent receipt on record to establish the relationship. As the defendants have disputed title of the plaintiffs, there was no question of payment of rent to them. Equally, no ground under Section 12 of the Act was available to the plaintiffs against the defendants. She lastly submitted that the plaintiffs have also not established their reasonable and bonafide requirement.

7. On the other hand, Mr. Pandey supported the

impugned orders. He submitted that though opportunity was given to the defendants, they did not participate before the trial Court. He, therefore, submitted that no case is made out for invocation of powers under Section 115 of C.P.C.

8. As noted earlier, in the suit filed by the respondents, the defendants filed written statement. Thereafter they did not participate in the trial. The defendants neither cross-examined the plaintiffs witness nor adduced their evidence. It is not in dispute that sufficient opportunity was given to the defendants to contest the suit. The defendants did not avail those opportunities. The learned trial Judge, after considering the material on record, decreed the suit. The Appellate Court has confirmed the decree. The submissions advanced on behalf of the defendants cannot be accepted as the written statement cannot take shape of proof. The defendants should have led the evidence. Mere filing written statement will not establish case of the defendants.

9. As far as reliance placed on the order dated 9.8.2012 passed by this Court is concerned, the Court after considering the suits filed by similarly situated persons and the respondents observed that the respondents did not get their right established from the Civil Court as per the order dated 14.3.2002 passed in Writ Petition No.5495/2001.

Though it may be true that this order was not produced before the Courts below, the order also does not conclusively hold that the respondents are not the landlords/owners of the suit premises. As against this, the Courts below after considering the evidence on record have concurrently decreed the suit.

10. 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. 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 Section 115 of C.P.C. is made out. Civil Revision Application fails and the same is dismissed. In the circumstances of the case, there shall be no order as to costs. In view of dismissal of C.R.A., Civil Application No.286/2015 for stay does not survive and the same is also disposed of. Mr.Pandey seeks permission to withdraw the amount deposited by the applicants unconditionally. Permission as prayed for is granted.

11. At this stage, Ms. Shah orally applies for stay of this order for a period of twelve weeks from today. Ms. Shah states that the applicants are in possession and they have neither created third party interest nor parted with

the possession. They will hereafter neither create third party interest nor part with the possession. He further states that the applicants and all adult family members residing with them are ready and willing to give usual undertaking within four weeks from today. Learned Counsel for the respondent opposes said prayer.

12. Having regard to the fact that applicants desire to challenge this order before the Apex Court, in my opinion, ends of justice would be served by staying operation of this order for a period of twelve weeks from today subject to the applicants and all adult members residing with them giving usual undertaking to this Court within four weeks from today incorporating therein:

- (i) that they are in actual possession of the suit premises and nobody else is in possession;
- (ii) that they have so far neither created third party interest nor parted with the possession of the suit premises;
- (iii) that they will hereafter neither create third party interest nor part with the possession of the suit premises;
- (iv) that they will pay the arrears of rent, if any to the respondents within four weeks from today; and
- (v) that in case the applicants are unable to obtain suitable orders within twelve weeks from today from

the higher Court, they will deliver vacant and peaceful possession of the suit premises to the respondent.

13. In view thereof, notwithstanding dismissal of Civil Revision Application, this order shall remain stayed for a period of 12 weeks from today, subject to the applicants filing undertaking in the aforesaid terms within four weeks from today, with copy in advance to the other side. In case the applicants do not file undertaking in the above terms and/or arrears of rent are not paid within four weeks from today, the interim order shall stand vacated without further reference to the Court. List the application for reporting compliance after five weeks. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)