

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.829 OF 2014

1.State of Maharashtra and Ors ..Applicants

Vs

Shapoorji Data Processing Pvt.
Ltd. .. Respondents

Mr.Ajit R.Pitale, Advocate for Applicants.
Ms. Ranjana Parikh, Advocate for Respondents.

CORAM : R.G.KETKAR,J.
DATE : 27/09/2016

PC:

1. Heard Mr. Ajit Pitale, learned counsel for the applicants and Ms.Ranjana Parikh, learned counsel for the respondents at length.
2. By this application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C. '), the applicants, hereinafter referred to as 'defendants', have challenged the Judgment and decree dated 11.6.2005 passed by the learned Judge presiding over Court Room No.17 of the Court of Small Causes at Mumbai in R.A.E.& R.Suit No. 130/284 of 1998 as also the Judgment and decree dated 10.4.2014 passed by the Appellate Bench of the Court of Small Causes at Mumbai in 2(a) Appeal No.80 of 2006. By these orders, the Courts below decreed the suit instituted by the respondents, hereinafter referred to as 'plaintiffs', under

section 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, 'Act') and directed the defendants to hand over vacant and peaceful possession of second floor admeasuring 7792 sq.ft in Contractor Building, situate on land bearing survey no.41-1187, Port Division, Ballard Estate, Mumbai 400 038 (for short, 'suit premises').

3. The plaintiffs instituted suit for recovery of possession of the suit premises, inter alia, contending that by demand notice dated 18.8.1997 they claimed arrears of rent for the period 1.1.1991 to 31.5.1997. Despite service, as the defendants failed to comply the requisition contained therein, suit was instituted for recovery of possession of the suit premises. During the pendency of the suit, the plaintiffs took out application under Order 15A of C.P.C. for directing the defendants to pay monthly rent of Rs.996/- and the increase in additional increased rent amounting to Rs.5918/- i.e. total Rs.6914/-. By order dated 25.9.2001, the learned trial Judge, without prejudice to the rights and contentions of the parties, directed the defendants to deposit arrears of rent and ground rent at the rate of Rs.6914/- from Jan.1991 to Sept., 2001 on or before 31.12.2001 and thereafter continue to deposit accruing rent and ground rent at the same rate on or before 10th day of each month commencing from October, 2001. The defendants were further directed to deposit

their share in municipal taxes from April, 1992 to March, 2001 amounting to Rs. 1,27,404/- on or before 31st December, 2001 and thereafter as per demand of the plaintiffs pay directly to them or deposit the same in the court. Issues were framed on 13.2.2003. The Courts below have decreed the suit under section 12 after holding that the defendants have not complied requirement of Section 12(3) of the Act. It is against these decisions, the defendants have instituted the present C.R.A.

4. In support of this application, Mr. Pitale has invited my attention to (i) scrutiny order dated 25.9.2001 (ii) chart indicating diverse payments made by the defendants towards the rent as also municipal taxes (iii) order dated 26.2.2002 passed by the learned trial Judge extending time stipulated in the order dated 25.9.2001 to 30.4.2002 for complying order dated 25.9.2001 (iv) the order dated 11.6.2005 passed by the learned trial Judge refusing permission to defendants to deposit interest at 9% on the amount of rent already deposited in the court as also for depositing the costs. He submitted that perusal of Chart at pages 210 to 212 would indicate that by and large the defendants were regularly depositing the rent as per the order dated 25.9.2001 barring few exceptions. He submitted that the defendants are State of Maharashtra and others. They have to follow procedure of obtaining sanction from the Finance

Department for depositing the amount. On few occasions, there was delay in depositing the amount as per the scrutiny order dated 25.9.2001. The delay was neither deliberate nor intentional but it was beyond the control of the defendants. He, therefore, submitted that application requires consideration. Otherwise, serious consequences will flow and the defendants will be required to vacate the suit premises. For all these reasons, he submitted that the application requires consideration.

5. On the other hand, Ms. Parikh supported the impugned orders. She submitted that the defendants did not file application for fixation of standard rent and permitted increases. They also did not deposit 9% interest and costs. That apart, the defendants did not regularly deposit the rent even as per the scrutiny order dated 25.9.2001. In fact, the scrutiny order was passed on the basis of application made by the plaintiffs under Order 15A of C.P.C. Even that order is not complied by the defendants. She relied upon the decision of the Apex Court in the case of Vasant Ganesh Damle Vs. Shrikant Trimbak Datar, 2002(2) All MR 594 and in particular paragraphs 5 and 6 thereof. She submitted that as the Courts below have decreed the suit after appreciating the evidence on record, no case is made out for invocation of powers under section 115 of C.P.C.

6. I have considered the rival submissions advanced by the

learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, it is not in dispute that the plaintiffs issued demand notice on 18.8.1997 claiming arrears of rent for the period from 1.1.1991 to 31.5.1997. It is also not in dispute that the demand notice was duly served on the defendants. The plaintiffs have instituted the suit on 20.2.1998 as the defendants failed to comply with the requisition contained in the demand notice. Defendants did not file any application for fixation of standard rent and permitted increases. On the other hand, the plaintiffs filed application under Order 15A of C.P.C. By order dated 25.9.2001, the learned trial Judge directed the defendants to deposit rent as also municipal taxes. The operative part of that order reads thus:

“Without prejudice to the rights and contentions of the parties, the defendants are directed to deposit the arrears of rent and ground rent at the rate of Rs.6,914/- from January,1991 to September, 2001 on or before 31st December, 2001 and, thereafter continue to deposit the accruing rent and ground rent at the same rate on or before 10th of each month commencing from October, 2001.

The defendants are further directed to deposit their share in municipal taxes from April 1992 to March, 2001 amounting to Rs.1,27,404/- on or before 31st December, 2001 and thereafter as per demand of the plaintiff pay directly to the plaintiff or deposit the same in the Court.

Money as and when deposited by the defendants be paid over to the plaintiffs.”

Perusal of the order extracted herein above shows that the same

was passed without prejudice to the rights and contentions of the parties.

7. Section 12(3) of the Act reads thus:-

“12. No ejectment ordinarily to be made if tenant pays or is ready and willing to pay standard rent and permitted increases.-

(3) No decree for eviction shall be passed by the Court in any suit for recovery of possession on the ground of arrears of standard rent and permitted increases, if, on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenants pays or tenders in Court the standard rent and permitted increases then due and together with simple interest on the amount of arrears of such standard rent and permitted increases at the rate of nine per cent per annum; and thereafter continues to pay or tenders in Court regularly such standard rent and permitted increases till the suit is finally decided and also pays cost of the suit as directed by the Court:

Provided that, the relief provided under this subsection shall not be available to a tenant to whom relief against forfeiture was given in any two suits previously instituted by the landlord against such tenant.”

In order to avail protection under section 12(3) of the Act, the defendants have to establish that on the first day of hearing of the suit or on or before such other date as may be fixed by the Court, the defendants have paid or tendered in the court standard rent and permitted increases due as on the first date of hearing of the suit together with simple interest on the amount of arrears of such standard rent and permitted increases at the rate

of 9% per annum and thereafter continue to pay or tender in the court such standard rent and permitted increases till the suit is finally decided and also subject to payment of costs of the suit as directed by the Court.

9. In the case of Vasant Ganesh Damle (supra), in paragraph 6 the Apex Court has observed thus:

“6. A perusal of the trial order dated 3.9.1994 clearly and unambiguously shows that the said order had not been passed in terms of Sub-Section (3) of Section 12 of the Act. The aforesaid order was not passed at the request of the tenant but passed on the application of the respondents-plaintiffs who had prayed for the payment of the suit amount rent. The said order was passed not on the first day of hearing or on or before any other date as fixed by the court. The amount mentioned in the order was the suit amount which did not include permitted increases or interest and costs as contemplated by the aforesaid provision. It has been pointed out that despite the aforesaid order the appellant did not make the payment within time specified and defaulted the payment of future rent in terms thereof. The suit of the plaintiff could not, therefore, be dismissed on the basis of the trial court's order dated 3.9.1994.”

10. In view thereof as also in view of the fact that the scrutiny order was passed without prejudice to the right and contentions of the parties, the defendants, in order to avail benefit of section 12(3) of the Act, were under obligation to comply with requirements set out therein. Admittedly, the defendants did not deposit 9% interest and costs of the suit. The question is whether the defendants have regularly deposited standard rent

and permitted increases during the pending of the suit. Perusal of the Chart at pages 210 to 212 shows that rent for the period July, 2002 to August 2002 was deposited on 7.9.2002. The rent for the period March 2003 to May 2003 was deposited on 30.6.2003. Rent for the period July 2003 and August 2003 was deposited on 21.1.2014. Rent for the period Sept.2003 to May 2004 was deposited on 28.7.2004. Rent for the period June 2004 to August 2004 was deposited on 7.9.2004. Again rent for the period October, 2004 to December 2004 was deposited on 7.2.2005. Rent for the period March 2005 and April 2005 was deposited on 20.5.2005.

11. In the present case, the defendants have filed application dated 11.6.2005 seeking permission to deposit interest at 9% on the amount already deposited in the court as also for depositing the costs. On the same day, the learned trial Judge rejected the application by observing that the application is filed when the matter was posted for judgment. After rejecting the application, the learned trial Judge decreed the suit on the same day.

12. As far as municipal taxes are concerned, the defendants have deposited municipal taxes on 1.1.2002 covering the period January 1991 to September, 2001. Perusal of the Chart and deposits made by the defendants clearly indicates that even the

scrutiny order dated 25.9.2001 was not complied by the defendants. In short, the defendants did not deposit 9% interest and the costs as also did not deposit rent regularly during the pendency of the suit. After appreciating the evidence on record, the Courts below have concurrently held that the defendants are not entitled to protection of Section 12(3) of the Act.

13. After appreciating the material on record, I do not find that the Courts below have committed any error in arriving at this conclusion. The findings recorded by the Courts below are based on appreciation of evidence on record. The defendants were not in a position to demonstrate that the findings are perverse and that they are based on no evidence or they are contrary to evidence on record. Hence, no case is made out for invocation of powers under Section 115 of C.P.C. Application fails and the same is dismissed.

14. At this stage, Mr. Pitale orally applies for stay of this order for stay of this order for a period of 12 weeks from today. He assures that applicants will not seek further extension of time. He states that the applicants are in possession of the suit premises and nobody else are in possession. Applicants have neither created third party interest nor parted with possession and the applicants will hereafter neither create third party interest nor part with possession. He assures that the applicants

using the suit premises will give usual undertakings in this Court within two weeks from today with advance copy to other side, incorporating therein:

(i) that they are in possession of the suit premises and nobody else is in possession;

(ii) that they have neither created any third party interest nor parted with possession;

(iii) that they will hereafter neither create third party interest nor part with possession;

(iv) that they will pay arrears of rent within 2 weeks from today to the respondents;

(v) that they will not apply for further extension of time;

(vi) that in case they are unable to obtain suitable orders from higher Court within 12 weeks from today, they will vacate and hand over vacant and peaceful possession of the suit premises to the respondents.

15. In view thereof, notwithstanding dismissal of Civil Revision Application, the eviction decree shall not be executed for a period of twelve weeks from today subject to the applicants and all adult members using the suit premises filing undertakings in the aforesaid terms within two weeks from today and serving copy in advance to other side. It is made clear that in case arrears upto and inclusive of 12 weeks from today are not paid as also the

undertaking in the aforesaid terms is not filed within two weeks from today, the interim order shall stand vacated without further reference to the Court.

16. List the Application for reporting compliance after three weeks.

(R.G.KETKAR, J.)