

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 882 OF 2014

Shri Pundlik Ganpati Chavan	...Applicant
<i>Versus</i>	
Shri Dattatraya Krishnaji Joshi	...Respondent

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Mr.Umesh Mankapure, Advocate for the Applicant.
Mr. A.M. Kulkarni a/w. Mr. Akshay Shinde, Advocate for the Respondent.

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CORAM : R. G. KETKAR, J.

DATE : 14th June, 2016

P.C.

1. Heard Mr.Umesh Mankapure, learned Counsel for the applicant and Mr.A.M. Kulkarni, learned Counsel for the respondent, at length.

2. By this application under Section 115 of Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicant has challenged the judgment and decree dated 4.8.2010 passed by the learned 2nd Jt. Civil Judge, Junior Division, Sangli in Regular Civil Suit No.197/2003 as also the judgment and decree dated 29.4.2014 passed by the learned Ad-hoc District Judge-1,

Sangli in Regular Civil Appeal No.255/2010. By these orders, the Courts below decreed the suit instituted by the respondent, hereinafter referred to as the 'plaintiff', under Sections 15 and 16(1)(g) of the Maharashtra Rent Control Act,1999 (for short, 'Act').

3. In support of this application, Mr.Mankapure strenuously contended that the Courts below were not justified in passing the decree under Section 15 of the Act. In the first place, no finding is recorded by the Courts below about service of demand notice. Secondly, the defendant was staying at Chiplun and the notices were allegedly served at Sangli address. The notice returned 'unclaimed'. In short he submitted that the demand notice is not served. In view of Section 15(2) of the Act, the plaintiff could not have instituted the suit unless the demand notice is served.

4. As far as the ground of bonafide requirement is concerned, he submitted that in fact the plaintiff had agreed to sell the suit premises to the defendant. The defendant has paid Rs.1,00,000/- in the presence of one Mr. Prabhakar Govind Jamdade. He submitted that the plaintiff did not distance the

assertions made in para-10 of the written statement. Said assertions, being unchallenged, are deemed to be admitted by the plaintiff.

5. Mr. Mankapure further submitted that the plaintiff is residing at Kolhapur after retirement. The suit premises is situate at Sangli. Even otherwise, the plaintiff does not require the suit premises reasonably and bonafidely. That apart, there is no finding that the defendant did not search for alternate accommodation. He, therefore, submitted that the Courts below were not justified in holding that the plaintiff has established his reasonable and bonafide requirement and that hardship will be caused to the plaintiff in the event of refusal to pass the order of eviction. He, therefore, submitted that the application requires consideration.

6. On the other hand, Mr.Kulkarni supported the impugned orders qua the ground under Section 16(1)(g) of the Act as also on the question of comparative hardship. He, therefore, submitted that no case is made out for invocation of powers under Section 115 of C.P.C..

7. Apart from the fact that Mr.Kulkarni was not in a position to support the ground under Section 15 of the Act, from record I find that the Courts below did not record any finding about service of demand notice. Section 15(2) of the Act reads thus :

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

(1)

(2) No suit for recovery of possession shall be instituted by a landlord against the tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of ninety days next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in section 106 of the Transfer of Property Act, 1882 (IV of 1882).”

8. In view of provisions of Section 15(2) of the Act, extracted hereinabove, the plaintiff could not have instituted the suit unless the demand notice is served on the defendant. The Courts below have not recorded any finding about the service of notice on the defendant. In view thereof, the Courts below could not have passed the decree against the defendant under Section 15 of the Act.

9. This brings me to the question of reasonable and

bonafide requirement. As far as trial Court is concerned, the learned trial Judge has considered this aspect in paragraphs-27 and 29. The learned trial Judge held that the plaintiff has established that his requirement is both reasonable as well as bonafide. The question of comparative hardship is considered in para-28 by the trial Court. As against this, the Appellate Court has agreed with the findings recorded by the trial Court. Perusal of para-28 of the trial Court's judgment shows that during the course of cross-examination the defendant admitted that he had property at Pethbhag, Sangli. He sold that property in the year 1998 for an amount of Rs.16,00,000/-. He had other property at Khanbhag, Sangli. He had sold that property for an amount of Rs.1,80,000/- in the year 1999. The defendant further admitted that after his retirement he got an amount of Rs.12 Lacs. Thus, after retirement and also in the year 1998-99, the defendant got substantial amount of Rs.32 Lacs which was adequate for the purchase of house property. The defendant admitted that in fact he intended to purchase a house for himself after selling the properties at Pethbhag and Khanbhag, Sangli. The learned trial Judge held that there is nothing on record to show how the defendant utilized the substantial amount of Rs.32 Lacs. As the

financial condition of the defendant is sound, he is in a position to acquire other house property and, therefore, will not cause any hardship or inconvenience if the decree of eviction is passed.

10. After considering the material on record, I do not find that the Courts below committed any error in passing the decree under Section 16(1)(g) of the Act. The defendant was 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. The defendant was 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.

11. At this stage, Mr. Mankapure orally applies for stay of this order for a period of twelve weeks from today. He further states that the applicant and all the adult family members residing with him are ready and willing to give usual

undertaking within two weeks from today. Learned Counsel for the respondent opposes said prayer.

12. Having regard to the fact that applicant desires 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 applicant and all the adult family members residing with him giving usual undertaking to this Court within two 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 the applicant will deposit the arrears of rent if any in this Court within two weeks from today; and (v) that in case the applicant is unable to obtain suitable orders within twelve weeks from today from the Superior 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 applicant filing undertaking in aforesaid terms within two weeks from today. The applicant shall file the undertaking, in aforesaid terms, within a period of two weeks from today, with copy in advance to the other side. In case the applicant does not file undertaking in the above terms and/or arrears of rent, if any, are not deposited in this Court within two weeks from today, the interim order shall stand vacated without further reference to the Court. List the application for compliance after three weeks from today. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)