

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
CIVIL REVISION APPLICATION NO.479 OF 2016

Dhananjay Laxman Sawant and others                      ...      Applicants  
Vs.  
Shriram Atmaram Rane and another                      ...      Respondents

Mr. Vishwajeet S. Kapse for Applicants.  
Mr. N. V. Walawalkar, Senior Advocate a/w. Mr. Prashant G. Karande for  
Respondents.

**CORAM : R. G. KETKAR, J.**  
**DATE : 03<sup>RD</sup> OCTOBER, 2016.**

**P.C. :**

Heard Mr. Kapse, learned Counsel for applicants and  
Mr. Walawalkar, learned Senior Counsel for respondents at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicants, hereinafter referred to as 'defendants', have challenged the - (i) judgment and decree dated 31.08.2007 passed by the learned Judge, presiding over Court Room No.8 of the Court of Small Causes at Bombay in R.A.E. Suit No.369 of 2000; (ii) judgment and order dated 14.02.2014 passed by the Appellate Bench of the Small Causes Court below exhibit-23 in Appeal No.615 of 2007 whereby the defendants application under Order VI, Rule 17 of C.P.C. for amending the written statement was rejected; and (iii) judgment and decree dated 23.06.2016 passed by the learned Appellate Bench in Appeal No.615 of 2007. By orders dated 31.08.2007 and 23.06.2016, the Courts below have decreed the Suit instituted by the respondents, hereinafter referred to as 'plaintiffs' under Section 13(1)(l) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Act'). Plaintiffs have instituted Suit against the defendants inter alia invoking grounds under Sections 13(1)(b), 13(1)(c),

13(1)(g) and 13(1)(l) of the Act. The Courts below have decreed the Suit only under Section 13(1)(l) and negated the other grounds. It is against these orders, defendants have instituted the present Application.

3. In support of this Application Mr. Kapse strenuously contended that the Courts below committed serious error in decreeing the Suit under Section 13(1)(l) of the Act without ascertaining whether the premises acquired by defendants in Kalyan are suitable or not. Plaintiffs did not plead and establish that the premises acquired at Kalyan are suitable alternate premises as contemplated by Section 13(1)(l) of the Act. He submitted that though plaintiffs were aware of acquisition of premises at Kalyan in the year 1989 itself, the Suit is instituted in the year 2000 and is therefore, clearly barred by limitation. He submitted that during the pendency of the appeal, defendants filed application exhibit-23 for amending the written statement so as to bring on record fact that the premises at Kalyan are unauthorized structures, and therefore, cannot be construed as suitable premises.

4. Mr. Kapse relied upon decision of this Court in the case of ***Shrirang Dharmaraj Kale Vs. Najmunissa A. Rahimbee Shaikh*, 2003 (1) Mh.L.J.638** to contend that distance between the suit premises and the acquired premises is a relevant criterion for deciding the suitability of the acquired premises. In the present case, the Courts below held that the distance between Parel, where suit premises is situate, and Kalyan is 30 kms. He submitted that the findings to the effect that defendants have acquired suitable alternate residence are perverse. He has taken me through the pleadings and evidence of the parties and submitted that application requires consideration. Mr. Kapse also relied upon decision of ***J. Marathe Vs. P. V. Kaloake*, (2004) 4 Mh.L.J. 287** to contend that landlord has to establish that the premises acquired by the tenant is

suitable.

5. On the other hand, Mr. Walawalkar supported the impugned orders. He submitted that plaintiffs have pleaded that defendants have acquired suitable alternate residence at Kalyan. Burden is upon the defendants to establish that the premises so acquired are not suitable. In the present case, after considering the topography of the area as also several circumstances, the Courts below have recorded a finding that the defendant No.1 has acquired the suitable alternate residence. The said finding is arrived at after appreciating the evidence on record, and therefore, no case is made out for interfering with the said findings.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. In paragraph 9 of the plaint, plaintiffs asserted that recently, they came to know that defendant No.1 has obtained and / or acquired suitable alternate accommodation at Bhagwan Construction Chawl No.10, Room No.3, Katemal Vithalwadi, Kalyan (E) which to the knowledge of the plaintiffs admeasures about 500 sq.ft., which is nearly three times more than the suit premises. Defendants dealt with this assertion in paragraph 5 of the written statement inter alia denying that defendant No.1 has obtained / acquired any suitable alternate accommodation as alleged at all. Defendants denied that the premises in Bhagwan Construction Chawl No.10 admeasures about 500 sq.ft. or is nearly three times more than the suit premises as alleged. Defendants further contended that the suit premises are neither suitable nor an alternate accommodation as alleged by the plaintiffs. The said premises was taken as defendant No.1's family comprised of his mother, himself, his sisters Koyna and Krishnakumari and Ashish and Madhavi, children of his sister Trupti Vishram Sawant. It was further contended that in

view of the large family and also because of the fact that defendant No.1 was of marriageable age, the premises was taken at Kalyan through loan as it was not possible to accommodate all the family members in the suit premises, which is a single room tenement.

7. Plaintiffs examined plaintiff No.2 Sadanand Rane to establish their case. In paragraph 8, he had stated that defendant No.1 obtained and / or acquired a suitable alternate accommodation at Bhagwan Construction Chawl No.10, Room No.3, Katemal Vithalwadi, Kalyan (East) admeasuring about 500 sq.ft., which is nearly three times more than the suit premises on ownership basis. In the cross-examination, he stated that he did not know that defendant No.1 had taken that room in the year 1989. As far as the defendants evidence is concerned, they examined defendant No.1. In paragraph 2 of the examination-in-chief, he deposed that the suit premises admeasures about 120 sq.ft. Presently, his mother, he himself, his wife and his children are residing in the suit premises. Defendants No.3 to 7 who are his sisters are residing in their respective matrimonial homes.

8. In paragraph 7, he stated that in the year 1989, he had obtained bank loan for the purpose of acquiring room No.3 in Chawl No.10, Bhagwan Nagar, Vithalwadi, Kalyan (East) as it was urgently required to accommodate his sister who was then to get married and had no premises to live. In support of his statement that he is residing along with his mother, wife and children, he produced Ration Card at Sr. No.4. In the cross-examination, he has given details about residence of his married sisters which establishes that they are residing in their respective matrimonial homes. Courts below have accepted the case that defendant No.1 has acquired suitable alternate residence. This aspect is considered by the learned trial Judge from paragraph 10 to 27.

After considering the various circumstances as also admission of defendants' witness, the learned trial Judge held that area of the flat at Kalyan is 345 sq.ft. consisting of three rooms and is a self-contained flat as against the suit premises which admeasures 120 sq.ft. having no toilet facility as also the fact that the suit premises is congested as compared to the premises acquired at Kalyan, which is considerably large and self-contained, it is more suitable for defendant No.1. In paragraph 19, the learned trial Judge also noted that defendant No.1 has clearly admitted in written statement about acquisition of premises at Kalyan and also overruled the contention that the Suit is barred by limitation. In paragraph 21, the learned trial Judge dealt with the decision in **Shrirang Dharmaraj Kale's case** (*supra*). In paragraph 22, the learned trial Judge noted that the distance between Parel and Kalyan is about 30 kms and dealt with the network of local trains that are available between Mumbai and Kalyan. In paragraph 23, the learned trial Judge considered the decision in the case of **J. Marathe** (*supra*) and ultimately decreed the Suit under Section 13(1)(l).

9. As far as the appellate Court judgment is concerned, this ground is considered in paragraphs 15 to 23. The appellate Court also dealt with the decisions in **Shrirang Dharmaraj Kale** (*supra*) and **J. Marathe** (*supra*). In paragraph 15, the appellate Court considered topographical condition of Mumbai City as also availability of local trains and bus service and the fact that the lacs of people are commuting between Thane and Mumbai daily for their work. In paragraph 21, the appellate Court noted that 70 to 80% members of Parivartan Co-operative Housing Society, where the alternate premises is situate, are the employees of RBI. These members are working in different branches of RBI, namely, Byculla, Worli, World Trade Centra and Fort in Mumbai. Thus, other RBI employees are attending the work from

Kalyan and therefore, the premises at Kalyan is suitable. Thus, the Courts below, after considering the evidence on record, have concurrently held that plaintiffs have established ground of acquisition of suitable alternate residence.

10. In the case of **Shrirang Dharmaraj Kale** (*supra*), plaintiff contended that defendant had agricultural land at Bhogewadi, which is owned by him. In other words, the basic ingredient of Section 13(1)(l) namely, acquisition of suitable alternate residence, itself, was lacking in that case. In the case of **J. Marathe** (*supra*), the Division Bench of this Court considered the decision of **Madhukar Sadashiv Parkhi Vs. Satayabhamabai Ganesh Sakrikar**, 1980 Bom.C.R. 182 wherein it was observed that the question of suitable alternate residence must depend upon the facts and circumstances of each case, including topography of the area and the situation of the alternate accommodation. The proximity of place of the alternate accommodation or building is relevant while deciding the question contemplated by Section 13(1)(l) of the Act. Courts below while decreeing the Suit have applied the tests laid down in the case of **Madhukar Sadashiv Parkhi** (*supra*). For the reasons recorded in paragraphs 14 to 27 by the trial Court and in paragraphs 15 to 23 by the appellate Court, I do not find that any case is made out by the defendants.

11. As far as the ground of limitation advanced by Mr. Kapse is concerned, he submitted that according to the defendants, plaintiffs were aware of acquisition of residence at Kalyan in the year 1989. As the Suit is instituted in the year 2000 i.e. to say within 12 years that, the Suit cannot be said to be barred by limitation. Defendants were not in a position to demonstrate that the findings recorded by the Courts below are perverse being based upon no evidence or that they are contrary to

the evidence on record. Defendants were also not in a position to demonstrate that no reasonable or prudent person would have reached the conclusion arrived at by the Courts below.

12. As far as challenge to the order dated 14.02.2014 passed by the appellate Court below exhibit-23 is concerned, I do not find that the appellate Court committed any error in dismissing the application. By the proposed amendment, defendants seek to contend that the premises in Kalyan is unauthorized structure and is therefore, not suitable. While rejecting the application, the appellate Court observed that the construction of premises at Kalyan was made long back. Normally, a person can certainly know as to the nature or existence of the illegalities in the legal construction or unauthorized construction. The same can be stated to be within the knowledge of the defendants. In any case, the said issue is between the Corporation and the defendants. As of today, the construction stands and the defendant No.1 is the owner of it. Defendant No.1, therefore, cannot say that premises at Kalyan is not available. I, therefore, do not find any merit in the submission of Mr. Kapse that the appellate Court committed error in dismissing the application exhibit-23.

13. In view thereof, 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. Kapse orally prays for stay of this order for a period of twelve weeks from today. He states that applicants are in possession of the suit premises and nobody else is in possession. Applicants have neither created third party interest nor parted with possession and applicants will hereafter neither create third party interest nor part with possession. He assures that the applicants and all

adult family members using/residing in 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, this order shall remain stayed for a period of twelve weeks from today subject to the applicants and all adult family members using/residing in 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.)**