

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition NO. 1196 OF 1998

Smt. Rukamani Magilal Bharindawal	...Petitioner
<i>Versus</i>	
Chandrakant Dagadu Balekar	...Respondent

With
Civil Application No.1756 of 2015
In
Writ Petition NO. 1196 OF 1998

....

Mr.Rahul D. Motkari, Advocate for the Petitioner.
Mr. S.M. Gorwadkar, Senior Advocate, for the Respondent.

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CORAM : R. G. KETKAR, J.

DATE : 23rd August, 2016

P.C.

1. Heard Mr.Rahul Motkari, learned Counsel for the petitioner and Mr.S.M. Gorwadkar, learned Senior Counsel for the respondent, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as the 'plaintiff', has challenged the judgment and decree dated 10.12.1997 passed by the learned II Additional District Judge, Nashik in Regular Civil Appeal No.81 of 1996. By that order, the learned District Judge allowed the appeal preferred by the respondent, hereinafter referred to as the 'defendant', and quashed and set aside the judgment and

decree dated 22.1.1996 passed by the learned Jt. Civil Judge, Junior Division, Igatpuri in Regular Civil Suit No.3 of 1991. The learned District Judge dismissed the suit instituted by the petitioner herein for recovery of possession of one room being House No.90 situate at Ghoti (Bk.) (for short, 'suit premises').

3. The relevant and material facts giving rise to filing of this Petition, briefly stated, are as follows :

. The plaintiff had instituted the suit for recovery of possession of suit premises *inter alia* contending that the defendant is a willful defaulter as contemplated by Section 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, 'Act'); that the plaintiff reasonably and bonafide requires the suit premises for occupation for herself and her family members as contemplated by Section 13(1)(g) of the Act and that greater hardship will be caused to her in the event of refusal to pass eviction decree; the defendant is guilty of conduct which is a nuisance or annoyance to the adjoining or neighbouring occupiers as contemplated by Section 13(1)(c) of the Act. The learned trial Judge accepted the grounds under Sections 12 and 13(1)(g) of the Act. The learned trial Judge, however, refused to pass the decree on the ground of nuisance and annoyance as contemplated in Section 13(1)(c) of the Act. Aggrieved by this decision, the defendant preferred appeal. The plaintiff filed cross-

objections at Exhibit-12. By the impugned order, the learned District Judge has dismissed the appeal. It is against this order, the plaintiff has instituted the present Petition.

4. In support of this Petition, Mr.Motkari strenuously contended that the plaintiff had issued demand notice at Exhibit-43 claiming arrears of rent from 21.9.1975 to 20.11.1990 to the tune of Rs.3640/- which is rent of 182 months. The defendant did not remit said rent by money order and gave false reply at Exhibit-36. The defendant alleged that though the rent was paid from time to time, the plaintiff did not issue rent receipts. The learned District Judge held that though the defendant contended that the amount was paid, except bare words there is no material to show that the rent was in fact paid. The learned District Judge, therefore, held that the defendant is in arrears of rent from 21.9.1975.

5. Mr. Motkari submitted that as the notice was not complied by the defendant, the plaintiff had instituted suit on 9.9.1991. The learned District Judge observed that on 12.7.1991, the defendant has deposited amount of Rs.4225/- which was inclusive of rent from 21.11.1975 to 20.12.1992 i.e. Rs.3900/- and interest of Rs.351/-. The learned District Judge observed that the issues were framed on 12.3.1993. The defendant has deposited the amount of Rs.4225/- on 12.7.1991 which was inclusive of rent from 21.11.1975 to

20.12.1992 i.e. Rs.3900/-. In other words, the defendant has deposited the amount together with interest within two years prior to framing of issues and that he was regularly depositing rent. He submitted that the learned District Judge committed serious error in holding that the defendant had paid the rent before the first date of hearing and subsequently he was depositing rent though there was no order. He submitted that the defendant is not entitled to protection under Section 12(3) of the Act.

6. As far as the ground of bonafide requirement is concerned, he submitted that the learned District Judge was influenced by the fact that two rooms are vacant and are in possession of the plaintiff. Out of these two rooms, one was given to Kailas Sharma, maternal uncle of Manojkumar. The shop in possession of erstwhile tenant Narendra Surana is available and can be used as office. The learned District Judge, therefore, observed that the requirement of the plaintiff cannot be said to be bonafide. The learned District Judge also wrongly held that greater hardship will be caused to the defendant in the event of passing of eviction decree.

7. Mr. Motkari also invited my attention to the photos depicting the condition of the suit premises. He submitted that the suit premises are in a dilapidated condition. The tenancy of the defendant is extinguished. In support of this

submission, he relied upon a decision of Apex Court in the case of ***Vannattankandy Ibrayi v. Kunhabdulla Hajee, (2001) 1 SCC 564.***

8. On the other hand, Mr. Gorwadkar supported the impugned order.

9. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the learned trial Judge decreed the suit under Sections 12 and 13(1)(g) of the Act and negatived the ground under Section 13(1)(c) of the Act. The learned District Judge has allowed the appeal of the defendant and dismissed the cross-objections filed by the plaintiff.

10. As far as ground of default under Section 12 of the Act is concerned, the plaintiff had issued demand notice on 16.10.1990 claiming arrears of rent @ Rs.20/- per month from 21.9.1975 to 20.11.1990. The Suit is instituted on 9.9.1991. In paragraph-11, the learned District Judge has observed that on 12.7.1991, the defendant has deposited amount of Rs.4225/- which was inclusive of rent of Rs.3,900/- covering the period from 21.11.1975 to 20.12.1992 and interest of Rs.351/-. The amount was deposited along with interest two years prior to framing of issues on 12.3.1993. The learned District Judge has referred

to various payments made by the defendant. After considering the payments made by the defendant, the learned District Judge further observed that though there was no order directing the defendant to deposit the rent regularly at particular rate, he went on depositing the amount and it was accepted. The total amount deposited so far also showed that the entire rent was paid for along with interest. Thus before the first date of hearing of the suit, the defendant has deposited the entire arrears along with interest and subsequently also he deposited rent, though there was no order of the Court. The learned District Judge, therefore, set aside the decree under Section 12 of the Act.

11. As far as the ground under Section 13(1)(g) of the Act is concerned, in paragraph-16 the learned District Judge noted that son of the plaintiff Manojkumar entered the witness box. He deposed that in the year 1995 his maternal uncle Kailas Sharma was allotted one room before five to six years of deposition. He admitted that Kailas Sharma is having his own house at Ghoti behind Bhut Bungalow. The very fact that the plaintiffs relative Kailas Sharma though has his own house was allotted one room itself shows that it is a self-serving statement. Though one room was available which was vacant, it was allotted to Kailas Sharma. Learned District Judge also noted that one shop vacated by Narendra Surana is just at the western side of the sitting room or

drawing room of the plaintiff. Same is convenient for opening office. Though the room vacated by Narendra Surana is available, the requirement is satisfied. I do not find that the learned District Judge has committed any error in holding that the plaintiff did not establish that his requirement is both reasonable as well as bonafide.

12. Mr.Motkari submitted that the suit premises is in dilapidated condition. The suit premises virtually is not in existence. Tenancy of the defendant is extinguished. He relied upon a decision in the case of **Shaha Ratansi Khimji and Sons v. Kumbhar Sons Hotel Private Limited and others, (2014) 14 SCC 1**, wherein Apex Court has considered the decision in the cases of **T. Lakshmipathi vs. R. Nithyananda Reddy, (2003) 5 SCC 150** and **Vannattankandy Ibrayi (supra)**. In paragraph-27, Apex Court opined that the decision rendered in **Vannattankandy Ibrayi's case (supra)** does not correctly lay down the law and accordingly overruled said decision. In view thereof, it cannot be said the tenancy of the defendant is extinguished.

13. The plaintiff was not in a position to demonstrate that the findings recorded by the District Court are perverse being based on no evidence or that they are contrary to evidence on record. The plaintiff was not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the District Court.

Hence no case for invocation of powers under Article 227 of the Constitution of India is made out. Petition 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 Writ Petition, Civil Application No.1756/2015 for bringing subsequent evidence on record does not survive and is also disposed of. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)