

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 9769 OF 2015

Shri. Ramakant Mahadev Gaikwad
And Anr.

...Petitioners

Versus

Shri. Vinayak Balasaheb Pawar

...Respondent

....

Mr.Pandit Kasar, Advocate for the Petitioners.

Mr. S.N. Chandrachood, Advocate for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 22nd July, 2016

P.C.

1. Heard Mr. Pandit Kasar, learned Counsel for the petitioners and Mr. S.N. Chandrachood, learned Counsel for the respondent, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the judgment and decree dated 25.3.2013 passed by the learned Judge, Small Causes Court, Pune in Civil Suit No.56/2011 as also the judgment and decree dated 12.6.2015 passed by the learned Principal District Judge, Pune in Civil Appeal No.332/2013. By these orders, the

Courts below decreed the suit instituted by the respondent, hereinafter referred to as the 'plaintiff' under Section 16(1)(n) of the Maharashtra Rent Control Act, 1999 (for short, 'Act').

3. By order dated 5.10.2015 this Court directed the petitioners to convert the Writ Petition into Civil Revision Application. In view of Section 7 of Code of Civil Procedure, 1908 (for short, 'C.P.C.'), Section 115 is not applicable to the proceedings instituted in the Court of Provincial Small Causes Court. In view thereof, it is not necessary to convert this Writ Petition into Civil Revision Application.

4. By order dated 9.10.2015, the petitioners were directed to deposit reasonable compensation @ Rs.4000/- per month from 1.4.2013 and also file usual undertaking in this Court within two weeks. Mr. Kasar states that he has complied the order dated 9.10.2015 by depositing amount @ Rs.4000/- per month from 1.4.2013 till June, 2016. Statement made by Mr. Kasar is recorded. Mr. Kasar further states that petitioner No.2 has also filed undertaking dated 20.10.2015 and thus complied the order dated 9.10.2015.

5. In support of this Petition, Mr. Kasar strenuously contended that the Courts below have committed serious error in decreeing the suit under Section 16(1)(n) of the Act. He submitted that the Courts below passed the decree on that ground mainly after considering the electricity bills in respect of the suit premises. He submitted that the electric meter was faulty and the petitioners were regularly making grievances to the officers of the electricity board. They have followed up the matter orally. In fact, the petitioners received bill of Rs.1,68,000/- in the year 2012 which itself substantiates the contention of the petitioners that the meter was faulty. He further submitted that the Courts below also came to the conclusion that defendant No.1 Ramakant Mahadev Gaikwad is residing in his own bungalow, namely, 'Alaknanda' Bungalow, Ganesh Colony, Gananjay Society, Azadwadi, Kothrud, Pune and that his mother was also residing with him in the said bungalow and she died in that bungalow on 3.2.2009. He submitted that the findings recorded by the Courts below are perverse and, therefore, the Petition requires consideration.

6. On the other hand Mr. Chandrachood has supported

the impugned orders. He has taken me through the impugned orders and submitted that after appreciating the evidence on record, the Courts below have concurrently decreed the suit under Section 16(1)(n) of the Act and therefore no case is made out for invocation of powers under Article 227 of the Constitution of India.

7. 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 Courts below have decreed the suit under Section 16(1)(n) of the Act. The learned trial Judge has considered this aspect from paragraphs-22 to 33. In paragraph-30, the learned trial Judge has enumerated the consumption of units from June, 2001 to May, 2008 and in paragraph-31 has enumerated the consumption of units from November, 2009 to October, 2010. Perusal of paragraphs-30 and 31 clearly establishes the case of non-user by the defendants. As far as the Appellate Court is concerned, the ground of non-user under Section 16(1)(n) of the Act is considered from paragraphs-30 to 41. In paragraph-30, the learned District Judge has considered the deposition of PW-1 which shows that defendant

No.1 is residing in Alaknanda Bungalow. He further deposed that there is no consumption of electricity in the suit premises and 13 units were recorded during the period from March, 2010 to October, 2010. In paragraph-32, the learned District Judge has noted the consumption of electricity and recorded a finding that defendant No.2 was not in occupation for more than six months prior to filing of the Suit and he is in occupation of the flat situate at Laxmi Ganga Society, Wadgaon Budruk, Sinhgad Road, Pune.

8. Mr. Kasar submitted that the defendants were repeatedly approaching the Electricity Board by raising grievance of faulty meter. However, it is not brought on record that any written complaint was made by the defendants in that regard. Reliance placed in bill of Rs.1,68,000/- is concerned, admittedly that was received in the year 2012. The suit is instituted on 3.2.2011. In view thereof, we have to consider the position of six months preceding the date of institution of the suit. Perusal of the material clearly shows that the defendants were not using the suit premises. I, therefore, do not find that the Courts below committed any error in decreeing the suit. 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 Article 226 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. The respondent is permitted to withdraw the amount deposited by the petitioners in the District Court unconditionally.

9. At this stage, Mr. Kasar orally applies for stay of this order for a period of eight weeks from today. Mr. Kasar states that the petitioners 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 petitioners and all adult family members residing in the suit premises with them are ready and willing to give usual undertaking within two weeks from today. Learned Counsel for the respondent opposes said

prayer.

10. Having regard to the fact that petitioners 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 petitioners and all adult members residing with them in the suit premises 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 they will pay the arrears of rent, if any to the respondent within two weeks from today; and
- (v) that in case the petitioners are unable to obtain suitable orders within eight weeks from today from the higher Court, they will deliver vacant and peaceful possession of the suit premises to the respondent.

11. In view thereof, notwithstanding dismissal of Writ Petition, this order shall remain stayed for a period of 08 weeks from today, subject to the petitioners filing undertaking in the

aforesaid terms within two weeks from today, with copy in advance to the other side. In case the petitioners do not file undertaking in the above terms and/or arrears of rent are not paid within two weeks from today, the interim order shall stand vacated without further reference to the Court. List the application for reporting compliance after three weeks. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)