

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 1014 OF 2014

Mrs. Maniben Sakarchand Shah
(deceased) through
1(a) Himmatlal Sakarchand Shah
and Ors.

...Applicants

Versus

Mr. Abdul Kadir Abdul Rehman Shaikh
(deceased) through
1(a) Chandbibi Abdul Kadir Shaikh
and others.

...Respondents

....

Mr. C.B. Yadav, Advocate for the Applicants.

Mr. Kunal Bhanage, Advocate for the Respondents.

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CORAM : R. G. KETKAR, J.

DATE : 28th June, 2016

P.C.

1. Heard Mr. C.B. Yadav, learned Counsel for the applicants and Mr. Kunal Bhanage, learned Counsel for the respondents, at length.

2. By this application under Section 115 of Code of Civil

Procedure, 1908 (for short, 'C.P.C.'), the applicants have challenged the judgment and decree dated 19.12.2012 passed by the learned Judge, presiding over Court Room No.32 of Court of Small Causes at Bombay (Bandra Branch) in R.A.E. Suit No.2/5 of 2009 as also judgment and decree dated 24.7.2014 passed by the Appellate Bench of Court of Small Causes at Bandra, Mumbai in Appeal No.11/2013. By these orders, the suit instituted by the respondents, hereinafter referred to as the 'plaintiffs' under Section 16(1)(g) of the Maharashtra Rent Control Act, 1999 (for short, 'Act') was decreed.

3. In support of this application Mr. Yadav submitted that the Courts below were not justified in passing eviction decree under Section 16(1)(g) of the Act. The need set up by the plaintiffs is neither reasonable nor bonafide. He submitted that out of three shops, the plaintiff had sold shop No.3 in the year 1989. Shop No.2 was sold in the year 1998-99 on the ground that the plaintiff was desperately in need of money. He, therefore, submitted that the need set up by the plaintiffs is neither reasonable nor bonafide.

4. Mr. Yadav reiterated the submissions that were

advanced before the Courts below. In particular, he invited my attention to paragraph-15 of the Appellate Court judgment to contend that the Appellate Court wrongly recorded a finding that no hardship would be caused to the defendant in the event of passing of eviction decree. He submitted that the Appellate Court held that the defendant has purchased two residential flats and one commercial premises. The defendant has no concern with the commercial premises.

5. On the other hand Mr. Bhanage supported the impugned orders. He submitted that Shop No.3 was sold in the year 1989 as the plaintiff was badly in need of money and shop No.2 was sold in the year 1998-99. The suit is instituted in the year 2009. He submitted that these facts are specifically set out in paragraphs-3 and 4 of the plaint. He submitted that the plaintiff has four sons. He is driving autorickshaw. The elder son of the plaintiff is married having two children. The second son is married having two children. The third son of the plaintiff is also driving autorickshaw to maintain his family. He is also having two children. The fourth son of the plaintiff is also married and is having two children. All the four sons of the

plaintiff are driving autorickshaws to maintain their families and also to maintain plaintiff and his wife. In the absence of any premises they are not in a position to carry on any business. He submitted that after appreciating the evidence on record, the Courts below have decreed the suit. He, therefore, submitted that no case is made out for invocation of powers under Section 115 of C.P.C..

6. I have considered rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the plaintiff has specifically asserted that the shop premises, namely, shop Nos.2 and 3 were sold respectively in the year 1989 and 1998-99. The plaintiff has not suppressed these facts and in fact he has given explanation in paragraphs-3 and 4 of the plaint as to why he was required to sell these shops. Having regard to the fact that the plaintiff and his sons are plying auto-rickshaws, explanation offered by the plaintiff that he was required to sell the shop Nos.3 and 2 as he was desperately in financial need is acceptable. The same was accepted by the Courts below. I do not find that any error in committed by the Courts below.

7. Mr. Yadav was not in a position to substantiate the plea of the defendant that he is not concerned with the shop premises. The Appellate Court held that though the defendant tried to say that the commercial premises is purchased by his brother and he has no concern with that he has not filed any documentary evidence to show that who is the owner of that premises. The defendant admitted existence of the commercial premises. In view thereof, I do not find that the Courts below committed any error in answering the question of comparative hardship in favour of the plaintiff.

8. As against this, after accepting the requirement set up by the plaintiff being both reasonable as well as bonafide, the Courts below considered the question of comparative hardship. In paragraph-15, the Appellate Court recorded a finding that no hardship would be caused to the defendant in the event of passing of eviction decree.

9. 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.

(R. G. KETKAR, J.)

Deshmane (PS)