

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.547 OF 2016

Sangeeta R. Devrukhar and others	...	Applicants
Vs.		
Saifuddin Ebrahim Golwala and another	...	Respondents

Ms Sunita R. Tiwari for Applicants.
Mr. S. P. Kanuga for Respondents.

CORAM : R. G. KETKAR, J.
DATE : 24TH OCTOBER 2016

P.C. :

Heard Ms Tiwari, learned Counsel for applicant and Mr. Kanuga, learned 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 judgment and decree dated 18.03.2013 passed by the learned Judge presiding over Court Room No.17 of the Court of Small Causes at Mumbai in R.A.E.&R. Suit No.286/509 of 2005 as also the judgment and decree dated 08.08.2016 passed by the Appellate Bench of the Small Causes Court in Appeal No.53 of 2013. By these orders, the Courts below decreed the Suit instituted by the respondents, hereinafter referred to as 'plaintiffs', under Section 15 of the Maharashtra Rent Control Act, 1999 (for short 'Act').

3. Plaintiffs instituted Suit for recovery of possession of Room No.1 in Khatija Manor, 4, Khambata Lane, Byculla, Mumbai 400 027 (for short 'suit premises') on the ground that defendants are in arrears of rent. Plaintiffs issued demand notice dated 28.04.2004 (exhibit-40) claiming arrears of rent from 01.03.2001 to 30.04.2004 amounting to Rs.15464.57/- in the demand notice, plaintiffs referred to cheque dated

10.04.2002 issued by defendant No.2 in the sum of Rs.2045/-, which was returned along with the notice. The notice was duly served on defendant No.2 on 30.04.2004. Despite service of notice, defendant No.2 did not comply with the requisition contained therein. Plaintiffs, therefore, instituted Suit against the heirs and legal representatives of defendant No.1 and applicant-defendant No.2 on 09.02.2005. On 20.04.2005, Suit summons was served on defendant No.2. Defendant No.2 did not comply the requirements laid down in Section 15(3) of the Act. She however filed application on 28.06.2006 at exhibit-10. The application was decided on 15.02.2007. The Courts below considered the fact that after service of demand notice on 30.04.2004, defendant No.2 did not tender the rent. That apart, even after service of suit summons on 20.04.2005, within 90 days, defendant No.2 did not take any steps as contemplated by Section 15(3) of the Act. The Courts below, therefore, decreed the Suit. It has also come on record that pending the appeal, plaintiffs have taken possession on 10.02.2015.

4. Ms Tiwari strenuously contended that defendants cannot be termed as a 'willful defaulter'. She submitted that in the year 1979, Maharashtra Housing and Development Authority (MHADA) carried out repairs of the building. The building is about 50 years old and was occupied by about 12 tenants. In the year 1983, respondents-plaintiffs purchased the building. In 2002, the toilet block was likely to collapse. Tenants were repeatedly approaching the landlord to carry out the repairs. Plaintiffs have instituted Suit against 7 tenants and also obtained possession from them. She submitted that right from 1992 onwards, tenants were requesting the landlord to carry out the repairs. Instead of carrying out repairs, plaintiffs entered into development agreement with "Aesthetic Construction". She submitted that even the rent receipt records that landlord will not be responsible in the event of collapse of

the building. She submitted that only the tenants are bound by the provisions of law and not the landlord. She submitted that the plaintiffs have obtained decree by playing fraud as also obtained possession by playing fraud. Defendants have made complaints against their Advocate with the Bar Council, and the same is pending. She submitted that as the demand notice itself records sending of cheque on 10.04.2002 for Rs.2145/-, it cannot be said that defendant No.2 is a willful defaulter. She, therefore, submitted that the application requires consideration.

5. On the other hand, Mr. Kanuga supported the impugned orders. He submitted that the facts disclose that defendant No.2 is not entitled to protection in view of non-compliance of Section 15(3) of the Act. The Courts below rightly held that defendant No.2 is a willful defaulter. He, therefore, submitted that no case is made out for invocation of powers under Section 115 of C.P.C.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, plaintiffs issued demand notice dated 28.04.2004 alleging that defendant No.2 is in arrears of rent from 01.03.2001 to 30.04.2004. The monthly rent includes repairs cess of Rs.287.43/- per month and yearly increased rent at the rate of 5% i.e. Rs.3.69/- ps. per moth. Perusal of the demand notice dated 28.04.2004 shows that plaintiffs referred to cheque dated 10.04.2002 sent by the defendant No.2 in the sum of Rs.2145/-. Perusal of that notice further shows that the rent payable for the period from March 2001 to March 2002 was Rs.2737.32/-. As against this, on 10.04.2002, defendant No.2 sent amount of Rs.2145/-. Apart from that, it is not disputed that defendant No.2 received the demand notice. No reply was given. At the same time, amount claimed in that notice was not tendered.

7. As defendant No.2 did not comply with the requisitions contained in the demand notice, Suit was instituted on 09.02.2005. Defendant No.2 was served with the suit summons on 20.04.2005. Section 15(3) 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) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the, standard rent and permitted increases, if any, and observes and performs the other, conditions of the tenancy, in so far as they are consistent with the provisions of this Act.

(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.

(3) No decree for eviction shall be passed by the court in any suit for recovery of possession on the ground of arrears of standard rent and permitted increases if, within a period of ninety days from the date of service of the summons of the suit, the tenant pays or tenders in court the standard rent and permitted increases then due together with simple interest on the amount of arrears at fifteen per cent per annum; and thereafter continues to pay or tenders in court regularly such standard rent and permitted increases till the suit is finally decided and also pays cost of the suit as directed by the court.

(4) ... ”

2. Perusal of sub-section (1) of Section 15 shows that the landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the, standard rent and permitted increases, if any, and observes and performs the other, conditions of the tenancy, in so far as they are consistent with the provisions of the Act. Sub-section (3) thereof injuncts the Court from passing eviction decree on the ground of arrears of rent and permitted increases if, within a period of ninety days from the date of

service of the summons of the suit, the tenant pays or tenders in court the standard rent and permitted increases then due together with simple interest on the amount of arrears at fifteen per cent per annum and thereafter continues to pay or tenders in court regularly such standard rent and permitted increases till the suit is finally decided and also pays cost of the suit as directed by the court. In the present case, considering the evidence on record, the Courts below have recorded a categorical finding that defendant No.2 did not deposit the amount of standard rent and permitted increases within 90 days from the date of service of summons together with simple interest on the amount of arrears @ 15%.

3. The learned trial Judge has considered this aspect from paragraphs 7 to 16 and the appellate Court has considered this aspect from paragraphs 9 to 11. For the reasons recorded therein, I do not find that the defendant No.2 is entitled to protection of Rent Act. As defendant No.2 did not comply the requirements laid down in Section 15(3) of the Act, the Courts below rightly came to the conclusion that he is a willful defaulter and was not ready and willing to observe the conditions of tenancy. 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 other than arrived at by the Courts below. Merely because on the basis of record, other view is possible, that itself is no ground for invocation of powers under Section 115 of C.P.C. That apart, admittedly, plaintiffs have also taken possession of the suit premises. Hence, Application fails and the same is dismissed.

(R. G. KETKAR, J.)