

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.685 OF 2015

Rajesh Bhajandas Kukreja ... Applicant
Vs.
Gulab Ganagaram Shindore (decd) through LRs
Sonibai Gulab Shindore and others ... Respondents

Mr. V. A. Gangal, Senior Advocate i/b. Mr. Sagar Talekar for Applicant.
Mr. P. S. Dani, Senior Advocate i/b. Ms Jui Nerurkar for Respondents No.1(A) to 1(E).

CORAM : R. G. KETKAR, J.
DATE : JUNE 27, 2016

P.C. :

Heard Mr. Gangal, learned Senior Counsel for applicant and Mr. Dani, learned Senior Counsel for respondents No.1(A) to 1(E) at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), the applicant has challenged the judgment and decree dated 03.07.2008 passed by the learned Joint Civil Judge, Junior Division, Nashik in Regular Civil Suit No.11 of 2003 as also the judgment and decree dated 04.08.2015 passed by the learned Principal District Judge, Nashik in Regular Civil Appeal No.141 of 2008. By these orders, the Courts below decreed the Suit instituted by the respondents, hereinafter referred to as plaintiffs under Section 16(1) (n) of the Maharashtra Rent Control Act, 1999 (for short 'Act').

3. In support of this application, the only contention advanced by Mr. Gangal is that during the pendency of the appeal, applicant, hereinafter referred to as defendant, has filed application dated 09.07.2015 under Order 41, Rule 27(a) of C.P.C. seeking permission to

lead additional evidence. Plaintiffs resisted the application by filing reply. On the same day, the learned District Judge passed the following order.

“ Heard.

Court will decide this application along with appeal.

sd/-

09.07.2015

”

4. Mr. Gangal submitted that while deciding the appeal, the learned District Judge did not decide application under Order 41, Rule 27(a) of C.P.C. He, therefore, submitted that the impugned order deserves to be set aside thereby restoring the appeal with further direction to the District Court to decide the application under Order 41, Rule 27(a) of C.P.C. along with the appeal.

5. On the other hand, Mr. Dani submitted that though the learned District judge passed order on 09.07.2015 to the effect that the application will be heard along with the appeal, defendant did not advance any submission on that application. He also invited my attention to paragraph 8-A of the application. He submitted that even in this paragraph, defendant did not contend that though application for leading additional evidence was argued alongwith the appeal, the learned District Judge failed to pass any order thereon. After appreciating the evidence on record, the Courts below have decreed the Suit under Section 16(1)(n) of the Act. He 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, the learned trial Judge decreed the Suit only under Section 16(1)(n) of the Act. Aggrieved by that decision,

defendant preferred appeal. During the pendency of that Appeal, he took out application under Order 41, Rule 27(a) of C.P.C. for production of additional evidence. Plaintiffs opposed that application by filing reply. On 09.07.2015, the learned District Judge directed that the said application will be heard along with the appeal.

7. Perusal of the order of the learned District Judge does not indicate that any submission was made on the application filed under Order 41, Rule 27(a) of C.P.C. That apart, in the Civil Revision Application originally filed, no such contention was advanced. It was amended as per order dated 09.12.2015 and paragraphs 8-A and 8-B were inserted. Paragraph 8-A reads thus,

“8-A The Applicant state that at the appellate stage the Applicant had filed an application at Exhibit-3/38 under Order 41 Rule 27(A) before the Ld. District Court, Nashik praying to take on record copies of the important documents of the year 2001-2002 and 2002-2003 which are referred in the evidence of the applicant. The Ld. District Court, Nashik passed an order dated 09/07/2015 that, “Heard, Court will decide the Application along with the Appeal.” that the Ld. District Court, Nashik heard the Appeal and dismissed the Appeal filed by the Applicant thereby confirming the order dated 3rd July 2008 passed by Ld. Trial Court, However, the Ld. District Court did not take into consideration the Application dated 09.07.2015 while hearing the Appeal and dismissed the Appeal and no order is passed upon the said Application dated 09.07.2015. That, the Lower Appellate Court has decided the Appeal without considering the important documents which was sought by the Applicant to take on record vide Application dated 09.07.2015. A copy of the application and order thereon dated 09.07.2015 with the documents are annexed hereto and marked as Exhibit-F.”

8. Perusal of paragraph 8-A extracted hereinabove does not show that defendant asserted that though arguments were advanced on application under Order 41, Rule 27(a) of C.P.C., the learned District Judge did not record those submissions and also did not deal with those submissions. In other words, defendant chose not to press that application.

9. Apart from that, perusal of application under Order 41, Rule 27(a) shows that the reasons given by the defendant are - in the evidence, defendant has referred to income tax papers for the assessment years 2001-2002 and 2002-2003. These documents are old documents and while leading evidence, the said files were not traceable. Defendant, therefore, could not produce these documents in the trial. As the documents are now traced and as they are public documents, it is necessary to permit the defendant to produce these documents on record. The object is not to fill up the lacuna in the evidence. In the case of ***Union of India. Vs. Ibrahim Uddin, (2012) 8 SCC 148***, the Apex Court has exhaustively dealt with provisions of Order 41, Rule 27 of C.P.C. in paragraphs 36 to 49. In paragraph 36, the Apex Court observed that the general principle is that the appellate Court should not travel outside the record of the lower court and cannot take any evidence in appeal. Order 41, Rule 27 of C.P.C. enables the appellate Court to take additional evidence in exceptional circumstances. The appellate Court may permit additional evidence only and only if the conditions laid down in the Rule are found to exist. The parties are not entitled, as of right, to the admission of such evidence. Thus, provision does not apply, when on the basis of evidence on record, the appellate Court can pronounce a satisfactory judgment. The matter is entirely within the discretion of the court and is to be used sparingly. In paragraph 39, it was observed that when a party had ample opportunity to produce certain evidence in the lower court but failed to do so or elected not to do so, cannot be allowed to produce it in appeal. The inadvertence of the party of realizing the importance of document does not constitute a substantial cause. The mere fact that certain evidence is important, is not in itself a sufficient ground for admitting that evidence in appeal.

10. Applying the tests laid down in this decision, I do not find that

defendants have made out any case satisfying the conditions stipulated in Order 41, Rule 27 of C.P.C. No other contention was advanced. 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.

(R. G. KETKAR, J.)

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