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*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION*

CIVIL REVISION APPLICATION NO.545 OF 2016

Hemant Manilal Dagley

.. Applicant

Vs

Arvind Vallabhdas Tanna & ors.

.. Respondents

Mr.Bharat Mehta, for the Applicant.

Mr.Rohit Pawaskar, for Respondent No.1.

Mr.Surel Shah a/w Mr.Manek Kohjaniwalla i/b Mulla & Mulla & CBC, for Respondent No.2.

***CORAM : N.M.Jamdar, J.
Tuesday, 22 November 2016.***

Oral Order :

The Applicant challenges Judgment and Order passed by the appellate bench of Small Causes Court, Mumbai dated 24 June 2016, allowing the appeal filed by Respondent-landlord and decreeing the suit directing the Applicant to hand over possession of the suit premises.

2. The suit premises are flat no.12-A, admeasuring 535 sq.ft. consisting of one room, kitchen and balcony on the first floor, Krishna building, 34 Khetwadi, Mumbai. The suit premises were let out initially by the Respondent-landlord to Manilal Jhaverchand

Dagley. R.A.E Suit No.663 of 1131 of 2002 was filed by the Respondent-landlord for ejectment of the Applicant and Respondent Nos.3 to 6. In the suit decree was sought on the ground of Section 16(1)(n) of the Maharashtra Rent Control Act, 1999 on the ground that the premises have not been used for period of more than six months prior to institution of the suit. The learned Small Causes Court Judge, Mumbai came to the conclusion that the provisions of section 16(1)(n) of the Act, are not attracted and accordingly by Judgment and Order dated 1 March 2006 dismissed the suit. Thereafter appeal was filed by the Respondent-landlord to the Appellate bench of Small cause Court, Mumbai. The appellate bench after hearing both the sides and perusing the record came to the conclusion that though the premises were not used for a period of six months by the tenant for a reasonable cause there is no intention to return to the premises and following the decision of this Court in the case of *Mohini Bhiryomal Hingorani vs Bhanubhai Manilal Patel – 1985 Bom. R.C. 27*, allowed the appeal and directed the Applicant and the Respondent Nos.3 to 6 to hand over the possession of the suit premises.

3. Heard learned counsel for the parties.

4. The learned counsel for the Applicant submitted that there is no requirement that there has to be a specific pleading that the tenant intends to return to the premises, envisaged by section 16(1)(n) of the Act. He submitted that even otherwise specific pleading has been

taken. The learned counsel submitted that once the heirs were brought on record, the non-user by them for a period of six months ought to have been proved. He further submitted that though the Applicant resides in United States, he visits the premises for his residential purpose and therefore, it cannot be presumed that the tenancy has been abandoned. The learned counsel relied upon the averments made in the Written statement as well as the depositions of the witness. The learned counsel for Respondents submitted that the tenant has expired and the sons and daughters have settled in their respective homes since long. He submitted that one of the daughter has filed written statement that she is not interested in the suit premises and in the written statement filed by the other Defendants it is clear that one son is staying in suitable premises in the nearby locality, one son is residing in United States and is a green card holder and nothing has been shown that he has ever visited the premises and that premises as of today have remained locked.

5. In the case of *Mohini Hingorani*, the learned Single Judge of Gujarat High Court interpreting the provisions of section 13 (1) (k) of the Bombay Rents Hotel & Lodging House Rates Control Act, 1947 has observed that the main purpose of Rent Control Legislation is make premises available to the tenants, who either cannot build their own or have no place to stay except in rented ones. The learned Single Judge has stressed on the fact that if the tenants are permitted to merely hold on to the premises, tenanted premises will not be

available to other needy tenants. That a tenant needs the premises is the basic premise inherent in the relationship of landlord and tenant. Though the learned counsel for the Applicant may be right in contending that in one line it is stated in the written statement that the tenant intends to return to premises, such pleadings cannot be construed mechanically. What needs to be ascertained is that whether there is a real intention. Therefore, Section 16(1)(n) not only postulates that the tenant is away from the tenanted premises for a specific period with reasonable cause but also that he has intention to return to the premises. In the present case reasonable cause which is upheld by both the courts in favour of the original tenant, is narrated in the written statement filed by the Applicant. The cause which is made out reads thus -

'(a) After the respective marriages of Defendant No.1 to 3, deceased tenant was residing with his wife and Defendant No.4 to 5 in the suit premises. However, due to growing needs of the family the suit premises was insufficient for the residence of Defendant No.4, 5 and their deceased parents. Under the circumstances, defendant No.4 acquired suitable premises for his residence. After the death of deceased mother, deceased tenant was residing in the suit premises along with Defendant No.5 and his family members.

(b) In 1995 Defendant No.5 went to USA for gain. However, deceased tenant continued to reside in the suit premises. In 1997 deceased tenant had his fracture. It was very serious fracture. He was admitted in the Bombay Hospital and he was hospitalized for nearly six months. During this period he also had severe heart attack. Due to

his deteriorating physical condition and the health deceased was compelled to stay at the residence of his daughter i.e. Defendant No.3. Deceased tenant was alone there was nobody-else to look after him. Under these circumstances, deceased tenant had no other option but to stay at his daughter's place. He was unable to move out of the bed. He was advised complete bed rest. He needed constant presence of dear one in house to look after him. However, during this period deceased tenant came to reside for a short time at the suit premises. However, he found it extremely impossible to stay alone in the suit premises due to his completely deteriorating ill health.

(c) Prior to one year of the death of the deceased tenant, he again had a fracture at the same place i.e. his ball fracture. His heart ailment had also been increased. He became very weak due to advanced age, Many aging problems have been cropped up. Under these circumstances deceased tenant was under depression. Defendant No.1., therefore, decided to take the deceased tenant at her residence temporarily during this time. During his temporary stay at the residence of Defendant No.2, the deceased tenant expired.

(d) Deceased tenant during his consent illness used to stay with his children temporarily under the circumstances as stated hereinafter. However, there was no intention and/or attempt either of the deceased tenant or these defendants to leave the suit premises permanently. There is bonafide/ reasonable cause for the deceased tenant to stay with these Defendants and particularly when Defendant No.1 and 3 under the circumstances as stated hereinabove'.

6. Going by the cause made out by the Applicant himself, the following factual situation emerges. The original tenant who was of

advanced age of 90 years had a fracture. He was hospitalised. Thereafter due to his deteriorating physical condition and age he was residing with his daughter - Defendant No.3 and he passed away thereafter. One daughter that is Defendant No.1 has filed written statement categorically stating that she is staying in her own premises since about 1950. She has stated that Defendant No.2 is staying in Borivali, Defendant No.3 is staying at Byculla, Defendant No.4 is staying at Forjeet Street and Defendant No.5 is residing at USA. The learned counsel for the Respondent has pointed out the cross-examination of Defendant No.4 wherein he has stated that he has no supporting document to show that since 1995, when Defendant No.5 shifted to United States, he had resided in the suit premises. Nothing stopped the Applicant or Defendant No.5 to produce documentary evidence in that regard. Therefore, in the facts of the present case it appears that after the death of the original tenant, his children are permanently residing in their own houses, therefore, even assuming that the Applicant and other Defendants had inherited any tenancy right, which is not the case since no one was residing with the original tenant when he passed away, they all have acquired alternate premises of their own and no intention to reside in the premises.

7. There is no error of jurisdiction committed by the Appellate Bench, in construing the provisions of section 16(1)(n). In the circumstances, no interference is warranted in the revisional jurisdiction. Revision Application is accordingly rejected.

8. The learned counsel for the Applicant seeks continuation of the ad-interim order. I am inclined to grant four weeks time, but it will take some time to get copy of the order, the ad-interim order is continued for a period of six weeks from today.

(N.M.Jamdar, J.)