

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.774 OF 2015

Sheelaben Ishwarilal Merai ... Applicant
Vs.
Kesarinath Ganpat Patil ... Respondent

Mr. Rakesh Mishra i/b. B. G. Legal for Applicant.
Mr. Ravindra Pawar i/b. Mr. R. D. Suryawanshi for Respondent.

CORAM : R. G. KETKAR, J.
DATE : AUGUST 29, 2016

P.C. :

Heard Mr. Mishra, learned Counsel for applicant and Mr. Pawar, learned Counsel for respondent at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicant, hereinafter referred to as 'defendant', has challenged the judgment and decree dated 03.03.2012 passed by the learned 3rd Joint Civil Judge, Senior Division, Thane in Regular Civil Suit No.417 of 2009 as also the judgment and decree dated 07.08.2015 passed by the learned District Judge-9, Thane in Civil Appeal No.20 of 2014. By these orders, the Courts below decreed the Suit instituted by the respondent, hereinafter referred to as 'plaintiff', under Section 15 (arrears of rent for more than 6 months) and Section 16(1)(b) (additions and alterations of permanent nature without written permission of the landlord) of the Maharashtra Rent Control Act, 1999 (for short 'Act').

3. In support of this Application, Mr. Mishra strenuously contended that the Courts below committed serious error in decreeing the Suit

under Section 16(1)(b) of the Act. He invited my attention to paragraph 24 of the District Court's judgment. In paragraph 24, the learned District Judge observed thus,

“24. ... The appellant has admitted in her cross-examination that she has illegally and unauthorizedly put the partition wall in the suit premises and the said partition wall constructed by the appellant in the suit premises is of permanent nature which she has admitted in her cross-examination.”

4. Mr. Mishra submitted that the said finding is contrary to the evidence on record. He invited my attention to the cross-examination of the defendant. In cross-examination, defendant deposed as under:

“... It is not true to say that for convenience of tailoring business, I have partitioned the suit premises. ...”

5. He submitted that defendant denied that for convenience of tailoring business, she had partitioned the suit premises. In other words, he submitted that defendant did not admit putting up partition wall in the suit premises as held by the learned District Judge. The finding recorded by the Courts below on the ground under Section 16(1)(b) is patently erroneous and contrary to record.

6. As far as ground of arrears of rent under Section 15 of the Act is concerned, he submitted that in May, 1989, defendant had paid rent @ Rs.360/- to the respondent-plaintiff. On 01.06.1989, partition was effected in the family of the plaintiff. Plaintiff did not establish factum of partition as he had produced photocopy of the Partition Deed dated 01.06.1989, which was marked as 'Article A'. In other words, Partition Deed was not admitted in evidence. He further submitted that during the course of cross-examination, plaintiff's witness deposed as under:

“It is not true to say that since 1989, defendant has paid rent of about two months to me.”

7. Mr. Mishra submitted that though defendant was ready and willing to pay the rent and in fact approached the plaintiff for accepting the rent, he refused to accept the rent. Plaintiff also did not issue rent receipt. He submitted that defendant is an illiterate lady and was not properly advised. She was represented by Advocate from the Legal Aid Panel. For all these reasons, he submitted that the application requires consideration.

8. On the other hand, Mr. Pawar supported the impugned order. He submitted that in paragraph 4 of the plaint, plaintiff specifically averred that without the consent of the plaintiff, defendant had illegally and unauthorizedly put up the partition wall in the suit premises and the said partition wall constructed by the defendant is of a permanent nature. He has also invited my attention to the cross-examination of the plaintiff's witness wherein he stated thus,

“It is true to say that the defendant had constructed partition wall inside the suit premises”

9. Mr. Pawar has invited my attention to paragraph 9 of the trial Court's judgment wherein the learned trial Judge observed that it is disclosed in the evidence of the plaintiff that without his consent, defendant illegally constructed partition wall, in the suit premises, of permanent nature. Instead of disputing the said fact, during the cross-examination of plaintiff, suggestion was given to him that defendant has constructed partition wall inside the suit premises and thereby she has admitted the fact that she has constructed partition wall inside the suit premises. The learned trial Judge, therefore, held that the admission of the defendant herself proves that she has erected permanent structure in the suit premises.

10. As far as the ground of arrears of rent is concerned, he has invited

my attention to the admissions given by the defendant in her cross-examination and submitted that the Courts below were justified in decreeing the Suit.

11. 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, plaintiff has instituted Suit for eviction on the ground of arrears of rent and additions and alterations of permanent nature without written permission of the plaintiff. As far as the ground of arrears of rent is concerned, the Courts below have considered the admissions given by the defendant in her cross-examination. In her cross-examination, defendant admitted that -

- (i) Kesarinath Ganpat Patil and the plaintiff are the real brothers;
- (ii) in the year 1989, there was oral partition between them;
- (iii) plaintiff was paying the tax of the suit premises and that he was carrying out repairs of the building in which the suit premises is situate;
- (iv) she did not give reply to the notice exhibit-43 and that she had not paid the rent;
- (v) even after receipt of the suit summons from the Court, she did not deposit the rent in the Court;
- (vi) since 1989 till date (14.02.2012), she had not paid the rent of the suit premises;
- (vii) after increasing the rent from Rs.65/- per month to Rs.360/- per month, she had paid one month rent @ Rs.360/- per month in May 1999.

12. Considering the admissions given by the defendant in the cross-examination, I do not find that the Courts below committed any error in decreeing the Suit under Section 15 of the Act.

13. As far as the ground of additions and alterations under Section

16(1)(b) of the Act is concerned, it is no doubt true that the learned District Judge has not properly dealt with the deposition of defendant and in particular in paragraph 24, the learned District Judge proceeded to observe that defendant admitted the cross-examination that she has illegally and unauthorizedly put up the partition wall in the suit premises and that the said partition wall is of a permanent nature. Nonetheless, perusal of the cross-examination of the plaintiff shows that suggestion was given on her behalf to plaintiff's witness who deposed that "it is true to say that defendant has constructed partition wall inside the suit premises".

14. The learned trial Judge has considered this aspect in paragraph 9 of his order as observed in paragraph 9 of this order. The learned trial Judge held that defendant has erected permanent structure in the suit premises.

15. Looking from this angle, I do not find that the Courts below have committed any error in decreeing the Suit under Section 15 as also Section 16(1)(b) of the Act. Defendant was not in a position to demonstrate that the findings recorded by the Courts below are based on no evidence or that they are contrary to the evidence on record. Defendant was also not in a position to demonstrate that on the basis of evidence on record, no reasonable or prudent person would have reached the conclusions arrived at by the Courts below. Merely because on the basis of evidence on record, another view is possible that itself is no ground for invocation of powers under Section 115 of C.P.C. Hence, Civil Revision Application fails and the same is dismissed.

(R. G. KETKAR, J.)