

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11668 OF 2016

Narayan Siva Masa Mhavarkar and others	... Petitioners
v/s	
M/s Hussein Abdul Karim Panju	... Respondent

Mr Ajit S. Karwande for Petitioners.

CORAM : RAJESH G. KETKAR, J.

DATE : 25TH OCTOBER, 2016.

P.C. :-

1. Not on board. At the request of Mr Karwande, taken up for admission.
2. By this Petition filed under Article 227 of the Constitution of India, the Petitioners / Defendants have challenged the judgment and order dated 11th June 2015 passed by the learned Trial Judge (below Exh.58) in R.A.E. Suit No.725/1308 of 1999 as also the judgment and order dated 1st August 2016 passed in Review Petition No.32 of 2015 . By order dated 11th June 2015 (below Exh.58), the Trial Court allowed the application made by the Plaintiffs and

directed the Defendants to allow the Plaintiffs to take inspection of documents as prayed for among other directions. By order dated 1st August 2016, the learned Trial Court rejected the Review Petition filed by the Defendants.

3. In support of this Petition, Mr Karwande submitted that earlier, the Plaintiffs had filed an Application (Exh.32) for inspection of the suit premises alongwith their Architect/s / photographer. That application was rejected on 16th February 2013. the Plaintiffs thereafter filed an Application for amending the plaint (below Exh.37) so as to incorporate paragraph 9A in the plaint. Paragraph 9A reads as under :-

“9A. The Plaintiffs submit that the Defendants have demolished the compound wall between the suit property and the adjacent open land and have installed an additional gate on the rear side of the suit property. The Defendants have also constructed a loft in the suit premises which have been constructed on iron girders which have been embedded into the flooring of the suit premises and have affixed stone tiles on the flooring of the suit premises. The above mentioned acts of the Defendants have been carried out without the permission

of the Plaintiffs and constitute a ground of eviction under section 13(1)(a) and 13(1)(b) of the Bombay Rent Control Act, 1947 inasmuch the above mentioned acts of the Defendants have caused damage and waste to the suit premises and also to the suit property and have also resulted in the construction of structures of a permanent nature which acts of the Defendants entitle the Plaintiffs to obtain an order of ejectment against them. The Defendants are not entitled to claim protection under the provisions of the Bombay Rent Control Act 1947.”

4. Mr Karwande submitted that in this paragraph, the Plaintiffs alleged that the Defendants had constructed a loft in the suit premises which have been constructed in iron girders, embedded into the flooring of the suit premises and have affixed stone tiles on the flooring of the suit premises. The above mentioned acts of the Defendants are without the permission of the Plaintiffs and constitute a ground of eviction under section 13(1)(a) and 13(1)(b) of the Bombay Rent Control Act 1947.

5. Mr Karwande also invited my attention to the present Application filed by the Plaintiffs for inspection of the suit premises

and paragraph 7 thereof. He submitted that the Plaintiffs have admitted that they have no evidence to substantiate the ground under section 13(1)(a) and 13(1)(b) of the Bombay Rents and Lodging House Rates Control Act 1947. In fact, in reply filed by the Defendants, the said contention was specifically raised. He further invited my attention to ground (iii) raised by the Defendants in Review Petition to contend that parameters for appointment of Court Commissioner under Order 39 Rule 7 of CPC are different and no case is made out in the present Application for appointment of Court Commissioner. The Plaintiffs have not given details of the alleged additions and alterations in the suit premises. The Trial Court was, therefore, not justified in allowing the application. In fact, earlier the Plaintiffs had prayed the same reliefs and the same were rejected by the Trial Judge.

6. I have considered the submissions of Mr Karwande. I have perused the material on record. As stated earlier, the Plaintiffs had filed earlier application (below Exh.32) seeking directions against the Plaintiffs to give inspection of the suit premises alongwith Architect / Photographer etc. The said application was rejected by

the learned Trial Judge on the ground that the Plaintiffs have not sought eviction on the ground that the Defendants have made additions and alterations. The learned Trial Judge was therefore of the view that the local inspection is not necessary for deciding the suit. It is not in dispute that thereafter the Plaintiffs have amended the plaint so as to incorporate the grounds under section 13(1)(a) and 13(1)(b) of the Act.

7. The Plaintiffs filed present Application for inspection of the suit premises. The learned Trial Judge considered the earlier Application which was rejected and the fact that the Plaintiffs have thereafter amended the plaint. Aggrieved by this order, the Defendants preferred Review Petition. While rejecting the Review Petition, the learned Trial Judge noted that the present Suit is filed under the Act and under that Act, there was no provision which is presently found in section 28 of the Maharashtra Rent Control Act, 1999. In paragraph 7 of the order, the learned Trial Judge also noted that the earlier Application was rejected on the ground that the eviction was not sought on the ground of additions and alterations. While rejecting the Review Petition, the learned Trial Judge noted that

the existence or non-existence of additions and alterations of any nature can only be proved by inspection of the suit premises. The learned Trial Judge therefore rejected Review Petition.

8. For the reasons recorded in paragraph 7 of the order dated 1st August 2016, I do not find that the learned Trial Judge committed any error in rejecting the Review Petition. The orders impugned in the present Petition are purely discretionary orders. The Defendants have not demonstrated that the discretion exercised by the Trial Judge is either perverse, arbitrary or capricious. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

9. However, it is made clear that where a decree is challenged by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the proposed proceedings as contemplated by Section 105(1) C.P.C.

(RAJESH G. KETKAR, J.)