

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 1039 OF 2014

Ravi Puthanveetil & Ors.

...Applicants

Versus

Kotmachu Vardaraj Annapurna

...Respondent

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Mr. G.S. Godbole, Senior Advocate a/w. Ms. Kavita Anchan i/b.
M.V. Kini & Co. for the Applicants.

Mr. P.S. Dani, Senior Advocate i/b. Mona Mehta, Advocate for the
Respondent.

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CORAM : R. G. KETKAR, J.

DATE : 09th June, 2016

P.C.

1. Heard Mr.G.S. Godbole, learned Senior Counsel for the applicants and Mr.P.S. Dani, learned Senior Counsel for the respondent, at length.

2. By this application under Section 115 of Code of Civil Procedure, 1908 (for short, 'CPC'), the applicants have challenged the judgment and decree dated 13.8.2014 passed by the Appellate Bench of Small Causes Court, Mumbai in Appeal No.24/2013. By that order, the Appellate Court allowed the appeal preferred by the respondent, hereinafter referred to as

'plaintiff', and quashed and set aside the judgment and decree dated 24.4.2013 passed by learned Judge, presiding over Court room No.9 of Small Causes Court at Bombay in R.A.E. Suit No.1189/1802 of 2010 and decreed the suit instituted by the plaintiff under Section 16(1)(n) of the Maharashtra Rent Control Act (for short, 'Act') and directed the defendant Nos.1 to 4 to hand over vacant and peaceful possession of room No.4 on the first floor, Laxmi Sadan, Sir Bhalchandra Road, Matunga, Mumbai – 400 019 (for short, 'suit premises') to the plaintiff within 90 days from the date of the order. The appellate Court has also ordered enquiry into mesne profits from the date of the order until delivery of possession of the suit premises. The appellate Court also directed the defendants No.1 to 4 shall not part with possession or create third party interest in the suit premises.

3. The plaintiff instituted the suit against the defendants on the ground that the suit premises are not used for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit. Learned trial Judge dismissed the suit. The plaintiff preferred appeal which

was allowed by the appellate Court. It is against this decision, the defendants have preferred this Civil Revision Application.

4. It is not necessary to burden this judgment. Suffice it to say that during the course of evidence of DW-1 it has come that defendant Nos.1, 3 and 4 never resided in the suit premises. The defendants have also specifically admitted in the written statement that the suit premises has not been used by defendant No.2 since October, 2008 till September, 2010 when the suit was filed by the plaintiff. The defendants came with the case that non-user of the suit premises was for reasonable cause as defendant No.2 has been suffering from “grand mal epilepsy” and “psychotics”, which is a physiological disorder. During this period, defendant No.2 was hospitalized. The controversy therefore is restricted to whether defendant No.2 has made out a case of reasonable cause for non user of suit premises.

5. Mr. Godbole submitted that in order to substantiate the reasonable cause, defendant No.2 has examined DW-2 Dr.Mahalaxmi Iyer. Dr.Mahalaxmi Iyer has obtained degree of M.B.B.S. and F.C.P.S. She has been managing and also proprietor of Rajpal Hospital and Balaji Health Care situate at

Koparkhairne, Navi Mumbai having its branch at Washind, District-Thane. DW-2 Dr.Mahalaxmi Iyer deposed that defendant No.2 was brought to the hospital on or about 16.10.2008 by her brother Mr. Ravi Puthanveetil. Since then she is under treatment and care of DW-2. Defendant No.2 is suffering from “grand mal epilepsy” and “psychotics”, which is neurological ailment in which the patient suffers from a sudden attack of convulsion of as commonly referred to as “fits”. DW-2 deposed that defendant No.2 also suffers from bouts of Schizophrenia which is another type of mental disorder in auditory hallucinations. DW-2 along with a Neuro physician have been treating defendant No.2 since last four years.

6. Mr. Godbole submitted that the suit is instituted by the plaintiff on 9.9.2010. From the evidence of DW-2 Dr.Mahalaxmi Iyer, it is evident that defendant No.2 was taking treatment from 16.10.2008 and thus has substantiated the reasonable cause for non-user of the suit premises. Appellate Court interfered with the trial Court's judgment on the ground that DW-2 has not produced any medical papers of defendant No.2 and that the medical papers produced by DW-2 Dr. Mahalaxmi Iyer are for

the period subsequent to filing of suit and more particularly of the year 2011 and of June, 2012. He, therefore, submits that the application requires consideration.

7. On the other hand, Mr. Dani supported the impugned order. He invited my attention to paragraph-16 of the appellate Court's judgment and submitted that as per Section 16(1)(n) of the Act, defendant No.2 will have to substantiate her reasonable cause and has to establish that for a continuous period of six months immediately preceding the date of the Suit, she was unable to live in the suit premises. In the present case, she has to establish reasonable cause six months preceding 9.9.2010 being the date of institution of the suit. Medical papers produced by DW-2 Dr.Mahalaxmi Iyer are for the period from July, 2011. He submitted that though DW-2 stated in her evidence that defendant No.2 was under her treatment from 16.10.2008, the witness did not produce medical papers of admission of defendant No.2 in her hospital for the relevant period of six months.

8. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused

the material on record. In the case of ***Dunlop India Ltd. v. A.A. Rahna, (2011) 5 SCC 778***, Apex Court has held that the initial burden lies on landlord to prove that as on date of filing Petition, tenant was not occupying building continuously for six months. Once such evidence is adduced, burden shifts on to tenant to prove that there was reasonable cause of his having ceased to occupy tenanted premises for a continuous period of six months. Para-22 of said decision reads thus :

“22. The initial burden to show that the tenant has ceased to occupy the building continuously for 6 months is always on the landlord. He has to adduce tangible evidence to prove the fact that as on the date of filing the petition, the tenant was not occupying the building continuously for 6 months. Once such evidence is adduced, the burden shifts on the tenant to prove that there was reasonable cause for his having ceased to occupy the tenanted premises for a continuous period of 6 months. ”

9. The only question that requires consideration is whether defendant No.2 has established reasonable cause for non-user of the suit premises six months preceding 9.9.2010 which is the date of institution of the suit. Appellate Court has considered this aspect in detail in paragraph-16 and has held that DW-2 Dr. Mahalaxmi Iyer though claims that defendant No.2 was under her treatment from 16.10.2008, has not

produced medical papers. Medical papers produced by DW-2 Dr. Mahalaxmi Iyer are post institution of the suit, namely, of the year 2011 and 2012. In view of the decision in the case of ***Dunlop India Ltd.***(*supra*), defendant No.2 has failed to establish reasonable cause for non-user of the suit premises six months preceding 9.9.2010 being the date of institution of the suit. I, therefore, do not find that the appellate Court has committed any error in decreeing the suit. Defendant No.2 was not in a position to demonstrate that the findings recorded by the Appellate Court are perverse being based on no evidence or that they are contrary to evidence on record. Defendant No.2 was not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the Appellate Court. Hence, Civil Revision Application fails and the same is dismissed. In the circumstances of the case, there shall be no order as to costs.

10. At this stage, Mr. Godbole orally applies for stay of this order for a period of twelve weeks from today. He further states that the applicants are ready and willing to give usual undertaking within two weeks from today. Learned Counsel for

the respondent opposes said prayer.

11. Having regard to the fact that applicants desire to challenge this order before the Apex Court, in my opinion, ends of justice would be served by staying operation of this order for a period of twelve weeks from today subject to the applicants and all adult members residing with them giving usual undertaking to this Court within two weeks from today incorporating therein: (i) that the applicants are in actual possession of the suit premises and nobody else is in possession; (ii) that the applicants have so far neither created third party interest nor parted with the possession of the suit premises; (iii) that the applicants will hereafter neither create third party interest nor part with the possession of the suit premises; (iv) that the applicants will clear the arrears of rent if any; and (v) that in case the applicants are unable to obtain suitable orders within twelve weeks from today from the Superior Court, they will deliver vacant and peaceful possession of the suit premises to the respondent. He further assures that within two weeks from today, the applicants will directly pay arrears of rent, if any, to the respondent.

32. In view thereof, notwithstanding dismissal of Civil Revision Application, this order shall remain stayed for a period of 12 weeks from today, subject to the applicants filing undertaking in the aforesaid terms within two weeks from today. The applicants shall file the undertaking within a period of two weeks from today, with copy in advance to the other side. In case the applicants do not file undertaking in the above terms and/or arrears of rent are not paid within two weeks from today, the interim order shall stand vacated without further reference to the Court. List the application for compliance on 28.6.2016.

(R. G. KETKAR, J.)

Deshmane (PS)