

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.169 OF 2016
WITH
CIVIL REVISION APPLICATION NO.272 OF 2016

Laxmi Barad

.. Petitioner

-Versus-

Dilip M. Chabria

..Respondent

Mr. V.S.Kapse for petitioner

Mr. R.A.Thorat, Senior Advocate with Mr. R.D.Mishra for respondent.

CORAM : R.G.KETKAR, J.

DATE : 21st September 2016.

P.C.

1] Heard Mr. Kapse, learned Counsel for the applicant and Mr. R.A.Thorat, learned Senior Counsel for respondents in both these applications at length.

2] By these applications under sections 115 of C.P.C. the applicants, hereinafter referred to as defendants have challenged the judgement and decree dated 22nd June 2010 passed by the learned Judge, Small Causes Court in R.A.E. & R. Suit No.831/1326 of 2005 and R.A.E. & R. Suit No.830/1325 of 2005 as also the judgement and decree dated 22nd September 2015 passed by the Appellate Bench of the Small Causes

Court in Appeal Nos. 383 of 2010 and 384 of 2010.

3] By these orders, the courts below decreed the suits instituted by the respondents, (hereinafter referred to as plaintiffs), on the ground of arrears of rent as contemplated by section 15 of the Maharashtra Rent Control Act, 1999 (for short "Act") and directed the defendants to hand over possession of Gala Nos. 8 and 9 situate at Jaycee Compound, Bhandup East, Mumbai as more particularly described in the suit (hereinafter referred to as suit premises).

4] The plaintiff has instituted suits against the defendants invoking grounds under section 13(1)(b) [carrying out additions and alterations of permanent nature without obtaining written consent from the landlord] and under section 15 (arrears of rent). The courts below have decreed the suit only on the ground of arrears of rent.

5] In support of these applications, Mr. Kapse submitted that the plaintiff had issued demand notice dated 3rd August 2004 calling upon the defendant to pay arrears of rent for the period from 1st January 2003 to 31st December 2004 at the rate of Rs.225/- per month. The defendant instituted an application for fixation of standard rent on or about 4th November 2004. On the same date, the learned Trial Judge directed the

defendants to deposit rent and permitted increase at Rs.295/- per month for the time being as per para 2, page 3 of the demand notice till further orders. The arrears were ordered to be deposited by the defendant on or before 30th November 2004 and further go on depositing from December 2004 till final hearing and disposal of the demand notice. He submitted that the defendant No.2 took out Interim Notice No.573 of 2005 dated 10th February 2005 for depositing rent in the court as per the order dated 4th November 2004 upto the month of January 2005 and, thereafter, for depositing regularly every month till final disposal of the interim application/ notice. By an order dated 24th November 2005, the learned Trial Judge allowed the notice and directed the defendant to comply with the order dated 4th November 2004 by depositing arrears of rent on or before 30th November 2005. In pursuance thereof, the defendant has deposited arrears in the court on 30th November 2005. He submitted that the suits were instituted on 19th July 2005. Thus, after the service of demand notice and even before the institution of suits, the defendant had filed application for fixation of standard rent. As per the order dated 24th November 2005 in interim notice taken out by the defendant, the defendant had deposited amount of arrears of rent on 30th November 2005. The defendant, therefore, cannot be held as willful defaulter and that he was not ready and willing as contemplated under section 15 of the Act. He further submitted that the suit summons was served on the

defendant on 16th March 2006 and within a period of 90 days from the date of service of the suit summons, the defendant has deposited arrears of rent on 30th November 2005. The courts below were, therefore, not justified in passing decree of eviction under section 15 of the Act.

6] On the other hand, Mr. Thorat submitted that though the defendant had filed an application for fixation of standard rent on 4th November 2004 and the order was also passed on 4th November 2004, directing the defendant to deposit arrears of rent of Rs.295/- per month on or before 30th November 2004 and also, thereafter, to go on depositing the rent on or before 10th day of each succeeding month commencing from December 2004, the defendant did not deposit the arrears of rent on or before 30th November 2004. The defendant, therefore, took out an application on 10th February 2005 seeking permission to deposit rent as per the order upto January 2005. That application was allowed on 24th November 2005 and arrears were deposited on 30th November 2005 and covering the period from 1st January 2003 to 31st December 2005. The defendant did not deposit arrears of rent along with interest at 15% p.a. on the amount due as on that date in compliance of section 15(3) of the Act. Apart from that, the defendant also did not regularly deposit the rent pending the suit. He submitted that in fact on 13th March 2011, the defendant filed an application seeking the permission to deposit arrears

of rent from 1st January 2006 to 20th March 2011 and further rent at Rs.225/- per month from 1st April 2011 onwards by condoning the delay. By order dated 16th June 2011, the learned trial Judge allowed the notice and directed the defendant to deposit arrears of rent amounting to Rs.14,175/- in the court within 15 days from the date of the order and, thereafter, regularly pay the standard rent of Rs.225/- per month on or before 10th day of each month. In other words, by filing application the defendant herself admitted that she has not deposited the arrears of rent from 1st January 2006 till 2011. He invited my attention to para 15 and 17 of the order of appellate court and submitted that defendant cannot avail the benefit of section 15(3) of the Act and courts below have rightly held that the defendant was not ready and willing and was willful defaulter.

7] I have considered the rival submissions of parties. I have also perused the material on record. It is not in dispute that the plaintiff had issued the demand notice dated 3rd August 2004 calling upon the defendant to pay arrears of rent from 1st January 2003 to 31st July 2004 at Rs.225/- per month. On 4th November 2004, the defendant filed the standard rent application. On the same date, the learned trial Judge directed the defendant to deposit arrears of rent and permitted increase at Rs.295/- per month for the period mentioned in para 3 of the notice till further orders. The arrears were to be deposited on or before 30th

November 2004. The defendant was further directed to go on depositing rent for each succeeding month till final hearing and disposal of the notice on or before 10th day of each succeeding month. It is not in dispute that the defendant did not comply with this order and in fact filed an application on 10th February 2005 for permission to deposit rent in the court as per the order dated 4th November 2004 upto the month of January 2005. Accordingly, on 30th November 2005, the defendant deposited arrears of rent covering the period from 1st January 2003 to 31st December 2005.

8] It is also evident from the record that the suit summons was served on defendant on 16th March 2006. The moot question is whether the defendant has satisfied the conditions stipulated in section 15(3) of the Act for availing benefits thereunder. Section 15(3) of the Act reads thus:-

“15(3) No decree of eviction shall be passed by the court in any suit for recovery of possession on the ground of arrears of standard rent and permitted increase if, within a period of ninety days from the date of service of the summons of the suit, the tenant pays or tenders in Court the standard rent and permitted increase then due together with simple interest on the amount of arrears at fifteen percent per annum; and thereafter continue to pay or tenders in Court regularly such standard rent and permitted increase till the suit is finally decided and also pays cost of the suit as directed by the Court”.

Perusal of the above extracted section shows that the court is injuncted from passing decree on the ground of arrears of standard rent and

permitted increase if, within a period of ninety days from the date of service of the summons of the suit, the tenant pays or tenders in Court the standard rent and permitted increase then due together with simple interest on the amount of arrears at fifteen percent per annum and thereafter continues to pay or tenders in Court regularly such standard rent and permitted increase till the suit is finally decided and also pays cost of the suit as directed by the Court as directed by the court. Thus, within 90 days from 16th March 2006, the defendant was required to comply with the conditions stipulated in section 15(3) of the Act.

10] In the present case, the defendant filed an application on 13th March 2011, seeking permission to deposit arrears of rent amounting to Rs.14,175/- from 1st January 2006 to 20th March 2011. By filing that application, the defendant clearly admitted that she did not deposit rent from 1st January 2006 onwards. This finding is recorded by the appellate court in paras 15 and 17. In para 17 the appellate court also noted that on 21st January 2014, the defendant filed an application Exh.20 seeking permission to deposit rent from August 2013 to January 2014. Thus, even during the pendency of the appeal, the defendant was not depositing the rent regularly.

11] In view thereof, I do not find that the courts below have committed

any error in firstly holding that the defendant was not ready and willing as contemplated by section 15(1) of the Act and secondly, that the defendant is not entitled to avail benefit of section 15(3) of the Act. The defendant was not in a position to demonstrate that the findings recorded by the courts below are perverse or that they are contrary to the evidence on record or that no reasonable or prudent person would have reached the conclusion arrived at by the courts below. Hence, no case is made out for invocation of powers under section 113 of the CPC. The applications are dismissed accordingly.

12] At this stage, Mr. Kapse orally applies for continuation of interim order dated June 20, 2016 for eight weeks from today. In the said order a statement was made by Mr. Mishra that the plaintiff has executed decree and has obtained possession was recorded. In view thereof, the plaintiff was restrained from creating third party interest and parting with possession of suit premises.

13] Mr. Thorat submits that even after obtaining possession by the plaintiffs, the defendant is trying to dispossess the plaintiff forcibly. He, therefore, submitted that the defendant may be also enjoined from dispossessing the plaintiff from the suit premises and he has no objection for continuing the interim order. In view thereof, notwithstanding the

dismissal of the C.R.As., the interim order dated 20th June 2016 is extended for a period of eight weeks from today. At the same time, the defendant is restrained from dispossessing the plaintiff from the suit premises. Order accordingly.

(R.G.KETKAR, J)