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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 258 OF 2015

Dilip Dattaram Hate .. Applicant

Vs.

Ashok Shankar Mainkar
Since deceased through his legal heirs
1/1. Vijay Shankar Mainkar and others .. Respondents

Mr.S.R.Page, Advocate for the Applicant.

CORAM : R.G.KETKAR, J.
DATED : 19th JANUARY, 2016

P.C. :

0. Heard Mr.S.R.Page, learned Counsel for the applicant at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), the applicant has challenged the judgment and decree dated 21/11/2012 passed by the learned 10th Joint Civil Judge, Junior Division, Thane in Regular Civil Suit No. 320 of 2007 as also the judgment and decree dated 06/09/2014 passed by the learned District Judge -8, Thane in Civil Appeal No. 410 of 2012. The learned trial Judge decreed the Suit on the grounds that i) respondents, hereinafter referred to as plaintiffs, have established that applicant, hereinafter referred to as defendant, is not in use and occupation of the suit premises since 06/07/2006

without reasonable cause ii) the plaintiffs proved that defendant has acquired suitable alternate accommodation and iii) plaintiffs proved that they are in bonafide need of the suit premises and greater hardship would be caused to them if the decree of eviction is not passed. The learned District Judge decreed the Suit only on the ground of non user of the suit premises.

3. Mr. Page submitted that the plaintiffs instituted Suit on 07/06/2007 inter alia claiming the possession of flat No. 9 admeasuring 400 sq.ft situate on the Second floor in the building known as 'Indira Sadan', Naupada Highway Co-operative Housing Society Ltd., behind Saraswati Marathi Medium School, Naupada, Thane (W), City Survey No. 27, Tika No. 21, House No. 113 (for short 'suit premises') on the ground that defendant is not in use and occupation of the suit premises since 06/07/2006 and the defendant has acquired suitable alternate accommodation elsewhere. The defendant has shifted himself and his family members along his bag and baggages in his newly acquired premises with the intention to reside there permanently. The plaintiffs further asserted that the suit premises have not been used without reasonable cause for the purpose for which it was let out for a continuous period of 6 months immediately preceding the date of the Suit.

4. The defendant filed written statement and resisted the Suit inter alia contending that plaintiffs never spent even a penny for

carrying out tenantable repairs either in the suit premises or in the suit building. The condition of the suit premises and building where the suit premises is situate is in deteriorated condition. The plaintiffs purposely did not carry out any repairs with a view to rendering defendant impossible to reside in the suit premises. The defendant denied the allegations that he is not in use and occupation of the suit premises since 06/07/2006.

5. On the basis of the evidence on record, the learned trial Judge decreed the Suit as indicated earlier. Aggrieved by that decision, the defendant preferred Appeal and the learned District Judge decreed the Suit only on the ground of non-user of the suit premises as contemplated by Section 16 (1)(n) of the Maharashtra Rent Control Act, 1999 (for short 'Act').

6. Mr. Page reiterated the submissions that were advanced before the Courts below. In particular, he submitted that the learned District Judge while dismissing the Appeal, has observed in paragraph 14 that defendant categorically admitted that he shifted in 'Smita Vihar'. He explained that due to fear and because of condition of the building, he was to shift. This itself is sufficient to believe the fact that suit premises was kept under non use since June 2007. He submitted that the Suit is instituted on 07/06/2007. In view thereof, requisite ingredients of Section 16(1)(n) itself are not satisfied as Section 16(1)(n) of the Act requires continuous non user

of the suit premises for a continuous period of 6 month immediately preceding the date of the Suit without reasonable cause.

7. He further submitted that in paragraphs 21 and 22, the learned District Judge also noted the fact that the building where the suit premises situate is in dilapidated and dangerous condition was brought to the notice of the Corporation and it appears that structural status report was obtained of 'Indira Sadan'. It is further noted that as far as hardship is concerned, having regard to the situation of the building as also from the admission on record shows that the building is in dilapidated and dangerous condition for human dwelling. He submitted that this itself constitutes a reasonable cause for not occupying the suit premises.

8. It is not possible to accept this submission. Section 16(1)(n) of the Act reads thus :

16(1)(n) : that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit.

9. Perusal of Section 16(1)(n) of the Act extracted hereinabove shows that the plaintiffs have to assert that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit. In the first place, the tenant has to plead and place material on record to indicate that he

is continuously using the suit premises and therefore, Section 16(1) (n) of the Act is not applicable. Secondly, in case, the tenant is not using the suit premises then, he has to specifically plead and prove reasonable cause. In the present case, perusal of the written statement does not indicate that the defendant has specifically pleaded any reasonable cause which prevented him from occupying the suit premises. The Courts below, after appreciating the evidence on record and on the basis of the admission of the defendant have concurrently found that he is not using the suit premises from July 2006 and has shifted in 'Smita Vihar'. The defendant has not established 'reasonable cause'. The observations made in paragraphs 14, 21 to 22 are not on the basis of the evidence adduced by the defendant showing 'reasonable cause'. I, therefore, do not find merit in the submission of Mr. Page that defendant has established 'reasonable cause'. Mr. Page was not in a position to demonstrate that the findings recorded by the Courts below are perverse being based upon no evidence or contrary to the evidence on record. Hence, no case is made out for invocation of powers under section 115 of the C.P.C. In the result, the Civil Revision Application fails and the same is dismissed.

(R.G.KETKAR, J.)