

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**Civil Revision Application NO. 398 OF 2016**

|                                   |                |
|-----------------------------------|----------------|
| Smt. Jaibunisa Kallu Khan And Ors | ...Applicants  |
| <i>Versus</i>                     |                |
| Suman Krishna More                |                |
| Since Deceased through LRs & Anr. | ...Respondents |

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Mr. Nitin P. Dalvi, Advocate for the Applicants.  
Mr. Sandip R. Khurkute, Advocate for the Respondents.

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CORAM : R. G. KETKAR, J.

DATE : 11<sup>th</sup> July, 2016

P.C.

1. Heard Mr. Nitin Dalvi, learned Counsel for the applicants and Mr. Sandip Khurkute, learned Counsel for the respondents, at length.
2. By this application under Section 115 of Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicants, hereinafter referred to as the 'defendants', have challenged the judgment and decree dated 29.12.2009 passed by the learned Civil Judge, Junior Division, Ulhasnagar in Regular Civil Suit No.191 of 2005 as also the judgment and decree dated 11.9.2015 passed by the learned District Judge-2, Kalyan in Civil Appeal No.77/2010. By

these orders, the Courts below decreed the suit instituted by the respondents, hereinafter referred to as the 'plaintiffs' for recovery of one room admeasuring 10X20 sq. ft. bearing Municipal House no.231, Shankar Patil chawl, Ward No.1, Opp. Apte Market, Ambernath-Badlapur Road, near Badlapur railway station, Kulgaon (W), Taluka-Ambernath, District-Thane (for short, 'suit premises') under Section 15, 16(1)(g) of the Maharashtra Rent Control Act, 1999 (for short, 'Act').

3. In support of this application, Mr. Dalvi strenuously contended that the learned trial Judge considered the evidence on record and after elaborate discussion decreed the suit only under Sections 15 and 16(1)(g) of the Act. As against this, the Appellate Court after framing points dealt with points No.2 to 8 from paragraphs-24 to 28. Inviting my attention to the discussion in those paragraphs, he submitted that the Appellate Court being last finding Court has to reappraise the evidence and independently record its finding. In the present case, the Appellate Court has failed to discharge its duty while deciding the appeal. In particular, he invited my attention to paragraph-26 and submitted that the learned District Judge held that the

plaintiffs have established the ground of change of user. The learned District Judge observed that the defendants admitted that they are using the suit premises for auction of black berry. He submitted that the black berry is a seasonal fruit and the dominant user of the suit premises is for residence. The learned District Judge was therefore not justified in passing the decree on the ground of change of user from residential to commercial user.

4. Mr. Dalvi further submitted that the learned District Judge has considered the ground of bonafide requirement as also question of comparative hardship in paragraph-27. In paragraph-28, learned District Judge observed that learned trial Judge has elaborately and properly discussed all the issues. The judgment passed by the trial Court is legal and proper and no interference is warranted. He submitted that the learned District Judge was not justified in deciding the appeal in such a manner. He, therefore, submitted that the application requires consideration.

5. On the other hand, Mr.Khurkute supported the impugned orders. He invited my attention to paragraph-25 of the

District Court judgment. In paragraph-25, learned District Judge noted that the defendants admitted that they have not paid any rent to the plaintiffs since the year 2005. As the defendants have admitted this fact, no evidence is required for answering point No.2. Learned District Judge, therefore, held that the defendants in arrears of rent.

6. As far as the ground of change of user is concerned, he submitted that the learned trial Judge has dealt with this aspect while answering issue No.5 from paragraph-22 onwards. He submitted that during the course of cross-examination, defendants' witness admitted that the suit premises is given for residential use. He submitted that the suit premises is given for residential purpose and in paragraph-8, the witness examined by the defendants admitted that the suit premises is let out for residential purpose. In the same paragraph, he admitted that his father used to auction blue berries and Singhadas from the suit premises. The said fact was also corroborated by the reply to the suit notice. After considering the evidence on record, the learned trial Judge held that the defendants have changed the user of the suit premises from residential user to commercial

user. The District Court has affirmed that finding. He submitted that if the District Court is reversing the finding of the trial Court, in that case the District Court has to elaborately discuss the evidence on record and record its finding independently after appreciating the evidence on record. In the present case, as the District Court was affirming the findings it is not obligatory on the part of the District Court to elaborately discuss the evidence on record.

7. As far as the ground of bonafide requirement is concerned, he submitted that the learned trial Judge has considered this aspect from paragraphs-23 to 25. The learned trial Judge also considered the question of hardship in paragraphs-27 and 28. As far as the decision of the District Court is concerned, the learned District Judge recorded a categorical finding that the plaintiffs are holding less space in the premises and are in need of premises reasonably and bonafidely and no hardship would be caused to the defendants in case the decree of eviction is passed. He, therefore, submitted that no case is made out for invocation of powers under Section 115 of C.P.C.. As noted earlier, the Courts below have passed the

decree under Sections 15, 16(1)(g) of the Act.

8. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. As far as the ground of arrears of rent is concerned, the learned trial Judge after elaborately discussing the evidence on record has held that the plaintiffs have established that the defendants are defaulters. As far as the District Court is concerned, in paragraph-25 the learned District Judge has considered the admission of the defendants that they have not paid any rent to the plaintiffs since the year 2005. Mr. Dalvi was not in a position to point out any illegality in the said finding. Thus the decree on the ground of arrears of rent under Section 15 of the Act is rightly passed by the Courts below.

9. As far as the ground of bonafide requirement under Section 16(1)(g) of the Act is concerned, the learned trial Judge has discussed this ground elaborately from paragraphs-23 to 25 and the question of comparative hardship in paragraphs-27 and 28. The learned trial Judge after considering the evidence adduced by the parties observed that the family of plaintiff No.1 consisting of six persons residing in one room. The learned trial

Judge, therefore, held that the plaintiffs have established that their requirement is both reasonable as well as bonafide. On the question of comparative hardship, the learned trial Judge after considering the documentary evidence held that the greater hardship would be caused to the plaintiffs in the event of Court refusing to pass the decree.

10. As far as the District Court is concerned, in paragraphs-27 and 28, the learned District Judge has affirmed the findings recorded by the trial Court. Mr. Dalvi submitted that the learned District Judge not properly decided the appeal. I do not find any merit in this submission. The District Court has affirmed the findings passed by the trial Court. The submission of Mr. Dalvi would have merited acceptance if the District Court were to reverse the decision of the trial Court. As the District Court was affirming the findings recorded by the learned trial Judge, I do not find any merit in this submission. That apart, insofar as the grounds of arrears of rent is concerned in paragraph-25, the learned District Judge has recorded admission of the defendants that they have not paid the rent to the plaintiffs since the year 2005.

11. The defendants were not in a position to demonstrate that the findings recorded by the Courts below are perverse being based on no evidence or that they are contrary to evidence on record. The defendants were not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the Courts below. Hence no case for invocation of powers under Section 115 of C.P.C. is made out. Civil Revision Application fails and the same is dismissed. In the circumstances of the case, there shall be no order as to costs.

12. At this stage, Mr.Dalvi orally applies for stay of this order for a period of twelve weeks from today. He states that the applicants are in possession and nobody else is in possession. Applicants have neither created third party interest nor parted with the possession. They will hereafter neither create third party interest nor part with the possession. He further states that the applicants and all adult family members residing with them are ready and willing to give usual undertaking within two weeks from today. Learned Counsel for the respondents opposes said prayer.

13. 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 they are in actual possession of the suit premises and nobody else is in possession;
- (ii) that they have so far neither created third party interest nor parted with the possession of the suit premises;
- (iii) that they will hereafter neither create third party interest nor part with the possession of the suit premises;
- (iv) that they will pay the arrears of rent if any; to the plaintiffs within two weeks from today; and
- (v) that in case the applicants are unable to obtain suitable orders within twelve weeks from today from the higher Court, they will deliver vacant and peaceful possession of the suit premises to the respondents/plaintiffs.

14. 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 as also paying arrears of rent, if any to the plaintiffs within 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 reporting compliance after three weeks. Order accordingly.

( R. G. KETKAR, J.)

Deshmane (PS)