

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.20 OF 2016

Kamalabai Jayantrao Parmar ... Petitioner
Vs.
Shakuntala Chandrakant Pardeshi and another ... Respondents

Mr. Nitin P. Dalvi for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : JANUARY 15, 2016

P.C. :

Heard Mr. Dalvi, learned Counsel for petitioner at length. Initially, the petitioner instituted Civil Revision Application No.20 of 2016. By order dated 13.01.2016, petitioner was permitted to convert this Revision Application into Writ Petition. Accordingly, petitioner converted Revision Application into Writ Petition. Office will number the Writ Petition.

2. By this Petition under Article 227 of the Constitution of India, original defendant No.1 has challenged the judgment and decree dated 20.01.2009 passed by the learned Judge, Small Causes Court, Pune in Civil Suit No.109 of 2007 as also the judgment and decree dated 19.10.2015 passed by the learned District Judge-17, Pune in Civil Appeal No.174 of 2009. By these orders, the Courts below decree the Suit instituted by the respondent No.1, hereinafter referred to as plaintiff, under Section 16(1)(g) of the Maharashtra Rent Control Act, 1999 (for short 'Act').

3. Mr. Dalvi strenuously contended that before instituting the Suit, plaintiff had issued notice dated 07.12.2006 inter alia alleging that

petitioner, hereinafter referred to as defendant No.1 – tenant, is in arrears of rent to the tune of Rs.1250/- from 01.01.2006. It was further contended that she requires the suit premises for her son who intends to carry on business. This was replied by defendant No.1 on 19.12.2006. In paragraph 5 of the reply, it was contended that plaintiff is issue less and therefore, the requirement pleaded is not reasonable and bonafide. On the other hand, this false contention shows that the requirement is mala fide.

4. Mr. Dalvi submitted that further in paragraph 5 of the plaint, plaintiff improved her case and alleged that suit premises is required for husband and foster son Manoj Gangapare. He submitted that during the pendency of the appeal, husband died and the alleged need is of her foster son Manoj. He invited my attention to the oral evidence of plaintiff, and in particular, to the admissions given by her in the cross-examination to the effect that there are several commercial and residential premises in the building owned by the plaintiff. She has not demanded possession of shop from other tenant Advani. She is getting Rs.1000/- to Rs.1200/- per month income out of business of selling of toys. If defendant No.1 pays rent @ Rs.4,000/- per month then it is acceptable to her. She can manage her household expenses if Rs.4,000/- per month is paid to her and that nobody is depending on her and her husband.

5. Relying upon this portion of the cross-examination, Mr. Dalvi submitted that pending the Appeal, plaintiff's husband has expired. Nobody is dependent on her and that, if defendant No.1 is ready and willing to pay Rs.4,000/- per month, she can manager her household expenses. He submitted that defendant No.1 is ready and willing to pay rent higher than Rs.4,000/- and as per the decision of the Apex Court in

the case of **M/s. Atma Ram Properties (P) Ltd vs M/S. Federal Motors Pvt. Ltd., (2005) 1 SCC 705.**

6. I have considered the submissions advanced by Mr. Dalvi. I have also perused the material on record. Perusal of paragraph 5 of the plaint clearly shows that plaintiff specifically asserted that her husband Chandrakant Pardeshi was carrying on business of selling of toys in the passage below the staircase in the suit building. The said business was carried on by the plaintiff and her foster son Manoj. Manoj is none other than the son of her sister. Plaintiff further contended that her family consists of herself, her husband, foster son Manoj, his wife Madhuri and their children. As she has no issues, she is treating Manoj as her son and since childhood, he is residing with her. He is carrying on business of selling of toys and helping her.

7. Perusal of evidence, and in particular paragraph 4 shows that plaintiff reiterated these facts in her examination-in-chief. Perusal of the cross-examination shows that the plaintiff was not confronted with the statement made in paragraph 4 of the examination-in-chief. Mr. Dalvi submitted that plaintiff admitted that she has not adopted Manoj and that she did not initiate any proceedings against other tenants residing in residential as well as commercial premises and that she admitted that if she is paid Rs.4,000/- per month then in that case, she can manage her expenses and that except her husband, nobody is depending on her. Perusal of the impugned orders shows that no such contention was advanced before the Courts below and for the first time, this contention is advanced. In view thereof, it is not open to the petitioner to advance this contention. Apart from that, the statement that if defendant No.1 pays rent @ Rs.4,000/- per month, the same is acceptable to her is doubtful as there is some interpolation in the testimony tendered in the

Court.

8. As far as the bonafide and hardship requirement is concerned, the learned trial Judge has considered this aspect in paragraphs 11 to 16. In paragraph 14, the learned trial Judge noted that plaintiff's husband and son Manoj are carrying on business of selling toys under the staircase. She has no other business premises. Though defendant No.1 contended that plaintiff's husband carries on business elsewhere, he has not clarified as to whether he has sufficient premises for running the business. The learned trial Judge, therefore, held that plaintiff has established that her need is, both, reasonable as well as bonafide. In paragraph 16, the learned trial Judge answered in favour of the plaintiff and held that greater hardship will be caused to her in case eviction decree is not passed.

9. As far as the appellate Court is concerned, this ground is considered from paragraphs 18 to 26. In paragraph 18, the learned District Judge observed that they are carrying on business of selling toys in a very small place and for carrying on that business, they have to stand on the road. In paragraph 19, it was observed that toys displayed for sale are on the door of the staircase of the building. She has pleaded that because of such small space, the sale has to be carried out by standing on the road and produced photographs exhibits 71 and 72, which were admitted by the defendant during the cross-examination. In paragraph 19, the learned District Judge noted that the evidence of the plaintiff's husband that family of defendant No.1 own shop at CTS No.817/5 at Bhavani Peth, Pune where they are doing jewelery business and that sons of defendant No.1 have premises at Satara Road, Raviwar Peth and other places for doing business was not controverted in the cross-examination. In paragraph 25, the learned District Judge noted

that plaintiff is issue-less lady. Her husband is no more. She has brought up foster son. Considering her age and meagre income, it is indeed necessary for the plaintiff to have decent place for business so that she need not stand on the road like her husband and sell toys with the help of her foster son. In paragraph 26, the learned District Judge held that greater hardship will be caused to the plaintiff, if the decree of eviction is not passed.

10. Thus, after appreciating the evidence on record, Courts below have categorically accepted the case made out by the plaintiff that her requirement is both, reasonable and bonafide. The findings recorded by the Courts below are based upon the evidence on record and it cannot be said that the said findings are contrary to record. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

11. At this stage, Mr. Dalvi orally applies for stay of this order for the period of 8 weeks from today. He states that within 2 weeks from today, petitioner will file usual undertaking in this Court incorporating therein that,

- i. he is in possession and nobody else is in possession of the suit premises;
- ii. he will neither create third party interest nor part with possession of the suit premises;
- iii. he will hereafter neither create third party interest nor part with possession of the suit premises;
- iv. he will clear the arrears of rent, if any, within 2 weeks from today;
- v. in case defendant no.1 is unable to obtain suitable orders from the higher Court within eight weeks from today, he will handover vacant and peaceful possession of the suit premises to the plaintiff.

12. Subject to the petitioner filing undertaking in the aforesaid terms within 2 weeks from today, notwithstanding dismissal of this Petition, the decree shall not be executed for a period of 8 weeks from today. Order accordingly.

(R. G. KETKAR, J.)

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