

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 274 OF 2016
IN
APPEAL NO. 45 OF 2009
IN
R.A.E. & R. SUIT NO. 282/706 OF 2002

Mr. Shamsuddin Abdul Kadar Shaikh & Anr.	Applicants
Vs.	(Org. Defendants)
Mr. Faizanul Haque Shamsi	Respondent
...	

Mr. G.S.Godbole, Senior Advocate a/w Mr. Sumit S. Kothari & Ms. Shivani Samel for the applicants.
Mr. N.G.Samant a/w Mr. Sandeep V. Mahadik for respondent No.1.
Applicant No.1 is present.

CORAM: R.G.KETKAR, J.
DATE : 26th October, 2016.

P.C.

Heard Mr. G.S.Godbole learned Senior Counsel for the applicants and Mr. N.G.Samant, learned counsel for the respondent at length.

2. Rule. Mr. Samant waives service. At the request and by consent of the parties, Rule is made returnable forthwith and the Application is taken up for final hearing.

3. By this Application under Section 115 of Code of Civil Procedure Code, 1908 the applicants, hereinafter referred to as “the defendants” have challenged the judgment and decree dated 20th December, 2008 passed by the learned trial Judge in R.A.E. & R. Suit No.282/706 of 2002 as also the judgment and decree dated 28th November, 2015 passed by the Appellate Bench of the Court of Small Causes at Bandra, Mumbai, in Appeal No.45 of 2009. By these orders, the Courts below decreed the suit instituted by the respondent hereinafter referred to as “the plaintiff” under Sections 15 and 16(1)(b) of the Maharashtra Rent Control Act, 1999 (for short “the Act”).

4. The plaintiff instituted the suit for vacant and peaceful possession of two rooms bearing Nos. 19 and 20 each admeasuring 134 sq. ft. along with two balconies on the second floor of Building No.5 situate at CTS No.A-1 and A-2, Navpada, Bandra (East), Mumbai (for short, “the suit premises”) by raising various grounds under the Act. Despite service, the defendants did not file written statement. The plaintiff filed his affidavit of evidence in support of his case and was cross-examined by the Advocate for the defendants. The Courts below decreed the suit as indicated earlier.

6. In support of this Application, Mr. Godbole raised various contentions. During the course of hearing, he has submitted that if the impugned orders are set aside and the defendants are permitted to file written statement as also cross-examine the plaintiff's witness/s as also lead evidence, the defendants are ready and willing to hand over possession of the suit premises to the plaintiff subject to the plaintiff giving undertaking that he will neither create interest nor shall part with possession and shall abide by the outcome of the suit subject to his right to challenge the decree in case it is passed against the plaintiff. He makes this statement upon taking instructions from applicant No.1, who is present in the Court. He has tendered a photocopy of the Aadhar Card of applicant No.1, which is taken on record and marked "X" for identification.

7. Mr. Godbole further submits that the defendants will deposit the arrears of compensation at the rate of Rs.7,000/- per month from the date of trial Court's decree dated 20th December, 2008 till handing over possession of the suit premises to the plaintiff on or before 31.1.2017 in the trial Court, under an intimation in writing to the plaintiff's Advocate. He further states that the amount deposited may be invested in a Nationalized Bank and the plaintiff may be permitted to withdraw the interest thereon. He further states that the applicants and all other adult family members

residing in the suit premises will file undertakings 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 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 hand over vacant and peaceful possession of the suit premises to the plaintiff on or before 31.1.2017.

8. Mr. Samant states that the respondent No.1 is present in the Court. He has tendered a photocopy of his Driving Licence, which is taken on record and marked "Y" for identification. Upon taking instructions from him, he consents for setting aside the impugned orders. He further states that the plaintiff may be permitted to examine other witnesses, if so advised.

9. In view thereof, by consent of the parties, C.R.A is disposed of in the following terms :-

- (i) The impugned judgments and orders passed by the Courts below are set aside and the suit is restored to the file of the learned trial Judge.

- (ii) The defendants shall file undertaking in the aforesaid terms with advance copy to the other side on or before 18.11.2016.
- (iii) The defendants shall file written statement within four weeks from 31.1.2017 and shall serve copy during this period on the plaintiff/his Advocate.
- (iv) The defendants shall hand over possession of the suit premises to the plaintiff on or before 31.1.2017.
- (v) The defendants will also deposit arrears of compensation at the rate of Rs.7,000/- per month with effect from 20th December, 2008 to 31.1.2017 in the trial Court on or before 31.1.2017 under an intimation in writing to the plaintiff's Advocate. The amount so deposited shall be invested in a Nationalized Bank for a period of three years to be renewed for suitable period pending the suit. The plaintiff is permitted to withdraw the interest thereon which shall be subject to the outcome of the suit.
- (vi) The plaintiff is at liberty to examine other witness/s, if so advised.
- (vii) The defendants are permitted to lead evidence and the plaintiff is at liberty to cross-examine the defendants' witnesses.
- (viii) After receipt of possession, the plaintiff will file undertaking incorporating therein that he will not create third party interest nor part with possession and will abide by the outcome of the suit subject to his right to

challenge the same in case it is adverse to him and shall give copy to other side. If such undertaking is filed, the same shall stand accepted.

(ix) Liberty is reserved to the plaintiff to amend the plaint, if so advised. If such an application is made, the learned trial Judge will allow the amendment and the defendants will be at liberty to file written statement/additional written statement accordingly.

(x) Liberty is reserved to the parties to make an application for disposal of the suit expeditiously. If such an application is made, the learned Judge will pass appropriate orders.

10. List Civil Revision Application on 25.11.2016 for reporting compliance.

(R.G.KETKAR, J.)