

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 40 OF 2014

Mohammed Pathan Fathe Mohammed .. Applicant
vs.
Sheikh Usman Sheikh Umar .. Respondent

Mr. Pritesh K. Bohade for Applicant.
Ms Manisha Salekar with Mr. Mohommad F. A. Wasif i/b. Mr. N. R. Bubna for Respondent.

CORAM : M. S. SONAK, J.
DATE: 08 AUGUST 2017

P.C :

1] Heard Mr. Bohade for the applicant and Ms Salekar for the respondent.

2] The applicant – tenant, challenges orders dated 24th September 2007 and 22nd November 2013 made by the trial Judge and the appeal Judge ordering his eviction from the suit premises on the grounds of default in payment of rent and reasonable and *bona fide* requirement made out by the respondent landlord.

3] Mr. Bohade, learned counsel for the applicant submits that the impugned orders have been made *ex parte*. He submits that no summons was ever served upon the applicant and thereby, the applicant, was deprived of the opportunity of filing any written

statement or leading any evidence in the matter. Mr. Bohade further submits that the record indicates that the applicant had paid all the rents by the year 2012 and this was sufficient for denying the respondent an order of eviction on the grounds of non payment of rent. Mr. Bohade submits that in this case both the trial Judge as well as the appeal Judge have completely ignored the provisions of section 16(2) of the Maharashtra Rent Control Act 1999, which, in terms, provided that no decree of eviction shall be passed on the grounds specified in clause (g) of sub section (1) i.e. eviction on the ground that the premises are reasonably and *bona fide* required by the landlord, if the court is satisfied that, having regard to all the circumstances of the case, including the question whether other reasonable accommodation is available for the landlord or the tenant, greater hardship would be caused by passing the decree than by refusing to pass it. He submits that where court is satisfied that no hardship would be caused either to the tenant or to the landlord by passing the decree in respect of the part of the premises, the courts shall pass the decree in respect of such part only. He submits that in the present case, the impugned decree has been made without even advertng to the issue of comparative hardship and such decree, he submits, is unsustainable and warrants interference.

4] Ms Salekar, learned counsel for the respondent submits that summons have been duly served upon the applicant and despite such service, it is the applicant, who chose not to contest the proceedings. She submits that both the trial Judge as well as the appeal Judge have specifically recorded a finding in this regard and there is absolutely no perversity in the record of such finding of fact. She submits that despite service of notice, defaulted rents were never paid by the applicant. She submits that the suit for eviction was instituted in the year 2009. It is only in the year 2012, and that too, before the appeal court, that the applicant deposited rent of Rs.720/-. She submits that such deposit does not wipe out the effect of default in payment of rent as contemplated by section 15 of the Rent Control Act. She submits that both the trial Judge as well as the appeal Judge have taken into consideration the position of the landlord and the fact that there has been an increase in the size of the landlord's family. She submits that learned trial Judge has recorded a finding that the children of the landlord are required to stay in an alternate premises, on account of paucity of space in the landlord's existing premises. She submits that these findings, and this material was more than sufficient for discharge of initial onus, in the matter of establishing comparative hardship. She submits that the onus had clearly shifted upon the applicant and since the applicant failed to discharge such onus, decree of eviction was

rightly made. She submits that this is a case of concurrent findings of fact and in the absence of any perversity, this Court, cannot interfere with the same in exercise of revisional jurisdiction.

5] Rival contentions now fall for my determination.

6] There is absolutely no material on record to support the applicant's contention that there was no valid service of summons upon the applicant. The trial Judge as well as the appeal Judge have recorded a finding of fact that there was valid service of summons upon the applicant. In fact, the appeal court, in paragraph 7 of its order dated 22nd November 2013 observes that after perusal of the record it is revealed that the applicant was duly served with the summons in the original suit. In the exercise of revisional jurisdiction and in the absence of any material to the contrary, it is not possible to interfere with the finding of fact concurrently recorded by the two courts.

7] Similarly, on the aspect of default in payment of rent, the material on record clearly establishes the default. The applicant has placed no material on record to dispute the factum of default. The suit in the present case was instituted in the year 2007. According to the applicant, rent of Rs.720/-, assuming that the same represents the entire arrears, was deposited in the year 2012 in the appeal

court after the original decree of eviction was made on 24th September 2007. The appeal itself was filed in the year 2009. Such deposit, can hardly, wipe out the cause of action accrued in favour of the landlord to seek eviction on the grounds of default in the payment of rent. Accordingly, there is no case made out to interfere with the impugned orders to the extent they have directed eviction of the applicant on the ground of default in payment of the rent.

8] Since, the order of eviction is required to be upheld on the grounds of non payment of rent, there is no necessity to examine Mr. Bohade's contention as regards the alleged non compliance with the provisions of section 16(2) of the Rent Control Act. However, it is necessary to note that in this case, the applicant, despite service of summons failed to contest the proceedings. The learned trial Judge, in its order dated 24th September 2007 has, at paragraphs 8 and 9, adverted to the aspect of the *bona fide* requirement and also, to a certain extent, to the aspect of parties hardship. In paragraph 9 the learned trial Judge has observed that there is an increase in the size of the landlord's family and the children of the landlord, on account of paucity of space, are compelled to reside in an alternate premises. In this case, the material on record is sufficient to hold that the landlord had discharged his burden. Thereafter, it was for the tenant to

demonstrate hardship, which, the tenant, despite opportunity, has failed to demonstrate.

9] It is well settled that this court, in exercise of its revisional jurisdiction does not normally re-assess the evidence or subplant findings as recorded by the trial court. This is also not a case of perversity in the matter of record of findings of fact.

10] Upon cumulative consideration of all such circumstances, there is no case made out to interfere with the impugned orders. This petition is accordingly dismissed. There shall however be no order as to costs.

11] At this stage, learned counsel for the applicant applies for a restraint on the execution of eviction decrees for a period of six weeks from today. Subject to the applicant filing the usual undertaking in the Registry within a period of one week from today, the execution of the eviction decrees is stayed for a period of six weeks from today.

(M. S. SONAK, J.)