

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL REVISION APPLICATION NO.746 OF 2015**

Shri Shridhar Dattatraya Karadkar	... Applicant
v/s	
Shri Narayan Laxman Soparkar	... Respondent

Mr Dilip Bodake i/b Mr Ravindra S. Pachundkar for Applicant.
Mr Manoj Prabhakar Mhatre for Respondent Nos.1 and 2.

CORAM : B.P. COLABAWALLA, J.

DATE : JUNE 15, 2017

JUDGMENT : -

1. This Civil Revision Application has been filed under section 115 of the Code of Civil Procedure 1908 seeking to quash and set aside the impugned judgment and order dated 30th July 2011 passed by the Small Causes Court, Bombay in R.A.E. & R. Suit No.1251/1887 of 2006 as well as the judgment and order dated 20th January 2015 passed by the Appellate Bench, Small Causes Court, in Appeal No.91 of 2011. The Trial Court in its impugned judgment and order decreed the eviction Suit filed by the Respondent herein (original Plaintiff) on the ground of non-user (section 16(1)(n) of the

Maharashtra Rent Control Act, 1999) (for short, the said Act) as well as on the ground of bonafide requirement (section 16(1)(g) of the Act). Being aggrieved by this order of the Trial Court, the Applicant herein filed an Appeal which also came to be dismissed by the Appellate Bench on 20th January 2015. It is in these circumstances that the Applicant is before me in my revisional jurisdiction under section 115 of the CPC. For the sake of convenience, I shall refer to the parties as they were arrayed before the Trial Court.

2. The brief facts giving rise to the present controversy are that the Plaintiff is one of the legal heirs of deceased Laxman Soparkar, who was the original landlord of “Narayan Ashram”, Varachi Aali, situated at Plot No.1176, 'M' Ward, Chembur Gaothan, Mumbai 400 071 (hereinafter referred to as the said building). The Defendant is a tenant of the Plaintiff in respect of Room No.1, admeasuring approximately 120 sq.ft. in the said building (for short, the suit premises).

3. The suit premises was let to the Defendant for residential purposes as a monthly tenant of Rs.60/- rent. According to the

Plaintiff, since the Defendant had acquired suitable residential premises during the month of December 1985 and since he and his family members were residing in these alternate premises, the Plaintiff and his brothers filed R.A.E. Suit No.642 of 1987 in the Court of Small Causes, Mumbai. That Suit came to be filed inter alia on the ground of bonafide requirement as well as non-user. The issues that were framed in the Suit were as follows :-

Sr.No.	Issues	Findings
1	Whether the plaintiffs prove that the defendant has acquired suitable alternate residential accommodation elsewhere ?	No.
2	Whether the plaintiffs prove that since December 1985 the suit premises is being kept locked ?	No.
3	Whether the plaintiffs prove that the suit premises is reasonably and bonafide required by the plaintiff No.3 ?	No.
4	To whom greater hardship will be caused ?	Hardship will be caused to Defendant.
5	Whether the plaintiffs are entitled for vacant and peaceful possession of the suit premises from the defendants ?	No.
6	What order and decree ?	The suit is dismissed. No order as to costs.

4. Consequently, after hearing the parties, the Small Causes Court, by its judgment and order dated 16th February 1998, dismissed the Suit that was filed by the Plaintiff and his brothers. Being aggrieved by this decision, an Appeal came to be filed, which was also dismissed on 20th September 2001. Thereafter, the Plaintiff filed the present Suit for eviction of the Defendants and for recovery of arrears of rent in the year 2006 being R.A.E. Suit No.1251/1887 of 2006. In the second Suit, it was alleged by the Plaintiff that the Defendant alongwith his wife and family members were residing in alternate premises at Thane for more than 20 years and that the suit premises was locked for the aforesaid period. It was additionally averred that the suit premises were reasonably and bonafide required by the Plaintiff. To substantiate this contention, the Plaintiff stated that he has no other accommodation in Mumbai and that he has retired from service and has no other accommodation in Mumbai. Since his wife was serving at the Collector's Office at Alibag, the Plaintiff was compelled to shift to Alibag to stay with his wife. Now his wife has also retired from service and therefore they do not have any accommodation. In fact, it is stated that after the retirement of his wife, the Plaintiff and his wife are staying in rented

accommodation in Alibag. It is in these circumstances that the case of bonafide requirement is pleaded in the plaint.

5. The claim of the Plaintiff was resisted by the Defendant by filing a written statement. In the written statement, it was claimed that the Defendant was very much residing in the suit premises and the justification given for his wife purchasing the alternate premises was that the suit premises were not large enough to accommodate the Defendant, his wife as well as his family members. He also refuted the claim of the Plaintiff that he had any bonafide requirement with reference to the suit premises. On these pleadings, parties led their respective evidence and the suit went for trial. Finally, after hearing the respective parties, the Trial Court by its judgment and order dated 30th July 2011 decreed the Suit in favour of the Plaintiff. Whilst doing so, the Trial Court framed as many as ten issues and answered five of those issues in favour of the Plaintiff. The Trial Court held that the Plaintiff has proved that the suit premises was not in use by the Defendant for a continuous period of six months prior to the filing of the Suit. It also held that the Defendant had acquired suitable alternate accommodation and that the suit premises was reasonably

and bonafide required by the Plaintiff for his own residence. Even on the issue of comparative hardship (as contemplated under section 16(2) of the Maharashtra Rent Control Act 1999) the Trial Court held in favour of the Plaintiff.

6. Being aggrieved by this decision, the Defendant preferred an Appeal before the Appellate Bench of the Small Causes Court, Bombay. The appellate Bench also examined the case in great detail and after hearing the parties and considering the evidence on record, dismissed the Appeal. This is how the original Defendant is before me in the present Civil Revision Application.

7. In this factual backdrop, Mr Bodake, learned counsel appearing on behalf of the Applicant (original Defendant) raised basically two contentions before me. Firstly, he submitted that the Trial Court has not considered all the evidence that was led by the Defendant in its correct and proper perspective. This itself will vitiate the orders passed by the Courts below. In this regard, he brought to my attention the evidence led by the Defendant and more particularly paragraphs 5, 9, 13, 17 and 30 of his affidavit in lieu of examination-

in-chief. He submitted that in the Defendant's evidence, he had categorically relied upon several documents such as ration-card, original election identity card, original marriage invitation card as well as his bank pass-book to show that he was very much in use and occupation of the suit premises. He submitted that these documents have not been correctly examined and in their correct perspective by the Courts below. According to the learned counsel, these documents would lead to an irresistible conclusion that the suit premises were used and occupied by the Defendant and the case put up by the Plaintiff that the premises were locked and not been in use for the purpose for which they were let out for a continuous period of six months prior to the filing of the suit is totally false.

8. The next contention raised before me by the learned counsel appearing for the Defendant was that R.A.E. Suit No.1251/1887 of 2006 (second Suit) was barred by the principles of res judicata. He submitted that admittedly, the Plaintiff alongwith his brothers had filed R.A.E. Suit No.642 of 1987 on the same grounds that were pleaded in the second Suit. The earlier Suit i.e. R.A.E. Suit No.642 of 1987 came to be dismissed on 16th February 1998. The

Plaintiff having failed in his first Suit, could not have filed the second Suit and on the same grounds that were sought to be canvassed earlier and rejected by the Trial Court in R.A.E. Suit No.642 of 1987. He submitted that there was no fresh cause of action in the second Suit and therefore the subsequent Suit (in which the impugned orders have been passed) was clearly hit by the principles of res judicata. For all the aforesaid reasons, the learned counsel submitted that I, in my revisional jurisdiction under section 115 of the CPC ought to interfere with the impugned orders and quash and set aside the same.

9. On the other hand, the learned counsel appearing on behalf of the Respondent (original plaintiff) submitted that no interference was called for in the impugned orders passed by the Courts below. He submitted that the Courts below have considered all the evidence on record that have been led by the parties in its correct perspective and thereafter come to the conclusion that they have. He submitted that there was ample evidence on record to establish that the original Defendant was not using the suit premises for a continuous period of six months and in fact, the premises were locked. He was at pains to take me through the impugned orders and

evidence led by the parties. Over and above this, the learned counsel also brought to my notice the three reports filed by the Bailiff, who went to serve the writ of summons on the Defendant at the suit premises. He submitted that on all three occasions, the Bailiff was unable to serve the summons at the suit premises as the same was found locked and when the Bailiff made inquiries with the neighbour, he was told that the Defendant does not reside at this address and rarely comes to the suit premises. Looking to all these facts, he submitted that a clear case of non-user was made out and the Courts below were fully justified in decreeing the Suit in favour of the Plaintiff.

10. Even on the issue of bonafide requirement, the learned counsel submitted that the Courts below have considered the evidence led by the parties and thereafter come to the conclusion that the suit premises were bonafide required by the Plaintiff. He therefore submitted that it was totally incorrect to submit that the Trial Court has not considered the evidence and therefore suffers from any infirmity as sought to be contended by the learned counsel for the Defendant.

11. On the issue of res judicata, the learned counsel appearing on behalf of the Respondent submitted that this argument is wholly misconceived. He submitted that the cause of action in the earlier Suit and in the subsequent Suit were totally different. According to the learned counsel, this issue has been correctly dealt with by the Courts below and the reasoning given by them is not only full justified but can certainly not be termed as perverse or suffering from any error of law apparent on the face of the record requiring my interference in my limited revisional jurisdiction under section 115 of the CPC. Looking to all these facts, the learned counsel submitted that there is no merit in this Civil Revision Application and the same ought to be dismissed.

12. I have heard the learned counsel for the parties at length and have perused the papers and proceedings in the Civil Revision Application. I have also carefully gone through the impugned orders passed by the Courts below. It is not in dispute that the Defendant is a monthly tenant of the Plaintiff. It is also not in dispute that the Plaintiff and his brothers had filed an earlier Suit for eviction of the

Defendant on similar grounds viz. on the ground of non-user and bonafide requirement as were canvassed in the second Suit. Considering this, I think it would be in the fitness of things to deal with the issue of res judicata first. On the issue of res judicata, I find considerable force in the argument canvassed on behalf of the Respondent that the subsequent Suit filed by the Respondent (original Plaintiff) was not barred by the principles of res judicata. This issue has been dealt with by the Trial Court from paragraphs 20 to 22 of its judgment. Whilst dealing with this issue, the Trial Court held that on a perusal of the judgment in R.A.E. Suit No.642 of 1987, the Plaintiff and others had filed the Suit for eviction of the Defendant in respect of the suit premises on the ground that the suit premises were kept locked since 1985. In the present Suit, the Plaintiff is seeking a decree of eviction on the ground that the Defendant was not using the suit premises for more than six months immediately preceding the date of the Suit. The earlier Suit was dismissed by a judgment and order dated 16th February 1998 and an appeal therefrom also was dismissed on 20th September 2001. In the present Suit, the Plaintiff alleges the ground of non-user (section 16(1)(n) of the Maharashtra Rent Control Act 1999) for a continuous period of six months prior to

the date of filing of the Suit. This is the issue that was decided by the Court in the second Suit. Just because the Plaintiff was unable to prove in 1998 the ground of non-user cannot preclude him from establishing in a subsequent Suit that the suit premises were not in use and occupation for a period of six months prior to the date of filing of the Suit. This cause of action is a fresh cause of action on which a Plaintiff can certainly bring a fresh Suit and agitate his claim. I therefore find that in the facts of the present case, the Courts below were fully justified in holding that at least as far as the ground of non-user is concerned, the subsequent suit was not barred by the principles of res judicata.

13. Even on the ground of bonafide requirement, I find that the Trial Court as well as the Appellate Court have given due consideration to this issue and thereafter come to the conclusion that even on this ground, the Suit was not barred by the principles of res judicata. It is not in dispute that as far as the first Suit was concerned, the same was filed by the Plaintiff and his brothers and the Plaintiff was unable to make out a case for bonafide requirement. In the facts of the present case, circumstances have clearly changed.

The Plaintiff has now retired from service and so as his wife who had accommodation in Alibag at the time when the first Suit was filed. In the second Suit, it is specifically averred that the Plaintiff and his wife have retired and are living in rental accommodation in Alibag and they have no other accommodation in Alibag nor the means to purchase another accommodation in Mumbai. It is in these circumstances, the Plaintiff pleaded that he bonafide required the suit premises for his personal use and occupation. It is therefore clear that the bonafide requirement that is now pleaded in the second Suit is totally different from the one that was pleaded in the earlier Suit. As mentioned earlier, in the earlier Suit, the bonafide requirement pleaded was not on behalf of the Plaintiff but also on behalf of his brothers. Since his brothers have now got suitable alternate premises, the Plaintiff would be the only person to have the bonafide requirement of the suit premises. It is in these circumstances, he has approached this Court on this ground. Looking to all these facts, I think that the Courts below were fully justified in coming to the conclusion that the subsequent Suit filed by the Plaintiff inter alia on the ground of non-user as well as bonafide requirement was not barred by the principles of res judicata. In any event, after going

through the impugned orders, I do not find that by any stretch of the imagination, the conclusions and findings arrived at therein can be termed as perverse or suffering from any error of law apparent on the face of the record requiring my interference in my limited jurisdiction under section 115 of CPC. The argument therefore that the second Suit was barred by the principles of res judicata is hereby rejected.

14. Having held so, I shall now deal with the argument of the learned counsel appearing for the original Defendant that the Trial Court has not considered evidence in its correct perspective. After going through the impugned orders, I find absolutely no merit in this contention. As far as the issue of non-user is concerned, the same has been dealt with by the Trial Court from paragraphs 9 to 15 of its order. It has referred to the evidence in considerable detail and after examining it in its entire perspective has come to the conclusion that the Defendant was not using the suit premises for a continuous period of six months prior to the filing of the suit. What is important to note is that the Trial Court has taken into consideration the electricity consumption for the suit premises and has clearly stated that on most

of the times electricity consumption was 'Zero' units for the period from June 2005 to January 2009. The learned Trial Court correctly surmises that if the Defendant was actually using and living in the suit premises as contended by him, there ought to be a regular consumption of electricity. Merely because the Defendant has produced the ration-card, election identity card and other documents showing the address of the suit premises would not by itself with nothing more, establish that the suit premises were used by the Defendant. Another factor that the Trial Court took into consideration was the fact that the wife of the Defendant admittedly used the alternate premises in Thane. It is not the case of the Defendant that he is estranged from his wife and living separately. This is coupled with the fact that the Defendant was 71 years old and was certainly unlikely to live alone all by himself. Another factor which indicates that the suit premises were not being used by the Defendant, are the service reports of the Bailiff. These reports clearly shows that the Defendant was not available at the suit premises on three occasions when the writ of summons was sought to be served at the said address. When inquiries were made with the neighbour, it was revealed that most of the times the premises remained locked.

Looking to all these facts and considering all the evidence, the Trial Court disbelieved the story of the Defendant that he was in use and occupation of the suit premises as alleged by him. Even the appellate Court has considered all these aspects and confirmed the findings and conclusions reached by the Trial Court on this issue. On going through these findings and conclusions, I am clearly of the opinion that the Courts below have correctly applied their mind to the evidence led before them and come to the correct conclusions. It certainly cannot be said that the analysis of the evidence done by the Courts below suffers from any perversity as sought to be contended before me.

15. Even on the issue of bonafide requirement, the Trial Court has given detailed reasons in paragraph 16 of the impugned order. These reasons have been given after taking into consideration the evidence led by the parties and the comparative hardship that would be caused to the Plaintiff if a decree of eviction is not passed in his favour. I do not find any infirmity in this finding. Looking to all these facts and circumstances, I am unable to agree with the learned counsel appearing for the Applicant that the Courts below had not

considered all the evidence in their correct perspective.

16. For all the aforesaid reasons, I do not find any merit in this Civil Revision Application and it is accordingly dismissed.

17. At this stage, the learned counsel appearing on behalf of the Applicant states that till today a statement was made by the learned counsel appearing on behalf of the Respondent that the Respondent shall not execute the eviction decree. He prays that the statement be continued for a period of eight weeks from today. This request is vehemently opposed by the learned counsel appearing on behalf of the Respondent. Having heard both the sides on this issue and having come to the conclusion that both the Courts below have correctly applied their mind to the issues raised before them, I do not think that this is a fit case to grant any stay. In view thereof, the request made by the learned counsel for the Respondent is rejected.

18. After this prayer for stay was rejected by me, the learned counsel appearing on behalf of the Applicant prays for two months' time to vacate the suit premises. Considering the aforesaid request,

the Applicant is granted two months' time to vacate the suit premises on him filing the usual undertaking in this Court within a period of two weeks from today. Needless to clarify that in the interregnum and till the Applicant hands over possession of the suit premises the Applicant shall not part with possession and / or create any third party rights and / or interest in the suit premises. This shall also be mentioned in the undertaking given to this Court.

(B.P. COLABAWALLA, J.)