

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7024 OF 2015

Ashok Venilal Suratwala

..Petitioner

Vs.

Mansukh Morarji Shah and Others

..Respondents

WITH

WRIT PETITION NO. 7901 OF 2016

Mahendra Venilal Suratwala

..Petitioner

Vs.

Mansukh Morarji Shah and Others

..Respondents

Mr. Parag Moreshwar Tilak a/w Ulka Saranjame, for the
Petitioners.

Mr. Prameel J. Pawar, for Respondent No.1 in both petitions.

CORAM :- B. P. COLABAWALLA, J.
DATE :- JULY 4, 2017.

ORAL JUDGMENT (PER B. P. COLABAWALLA, J.)

Both these Writ Petitions have been filed challenging
the judgment and order dated 25th November, 2008 passed by the
learned Judge of the Small Causes Court at Pune in Civil Suit

No.505 of 2004 as well as the judgment and order dated 17th March, 2015 passed by the Ad-hoc District Judge-4, Pune in Civil Appeal No.83 of 2009 (for short “the Appellate Authority”). The Trial Court, by the impugned order dated 25th November, 2008, decreed the Suit in favour of the 1st Respondent-Landlord and evicted the Petitioner in Writ Petition No.7024 of 2015 from the Suit premises. The Petitioner in Writ Petition No.7901 of 2016 was Defendant No.3 in the Suit filed by the landlord before the Trial Court. For the sake of convenience, I shall refer to the parties as they were arrayed before the Trial Court.

2 The brief facts of which note need to be taken of are that the Plaintiff is the owner of Flat No.5, 2nd floor, Mansukh Apartment, CTS No.100/3, Erandwane, Pune-4 (for short “the Suit premises”). The Suit premises admeasures approximately 650 sq.ft. and was occupied by Defendant No.1 (Petitioner in Writ Petition No.7024 of 2015) since the year 1974 as a tenant at the monthly rent of Rs.500/-. Subsequently, this rent was increased to Rs.900/- per month from 2001. It was the case of the Plaintiff that Defendant No.1 paid the rent for Suit premises until 24th March, 2004, and from April 2004 the amount of rent was in arrears. It was the further case of the Plaintiff that Defendant

No.1 had constructed the Bungalow in the year 1997-1998 at Vikramshela Society, Pashan, Pune and had started residing there. Thereafter, Defendant No.1 had also purchased the flat at Surad Apartment, Erandavana and he started residing there since the year 2000. It was the further case of the Plaintiff that over and above this, Defendant No.1 had inducted one Jishnuram M. Nayar as a sub-tenant and after him, Defendant No.2 was inducted as a sub-tenant.

3 It is on this basis that the Plaintiff filed a suit for eviction before the Trial Court being Civil Suit No.505 of 2014 seeking eviction of the Defendants under the provisions of Section 16 (1) (e) and 16 (1) (n) of the Maharashtra Rent Control Act, 1999. In this Suit, after the writ of summons was served, Defendant Nos.1 and 3 filed their Written Statement. Defendant No.2 though served, chose not to appear in the said Suit or file any Written Statement. On the basis of the pleadings of the parties before the Trial Court, it framed as many as seven issues. On the basis of the issues framed by the Trial Court, the parties led their evidence and thereafter the Trial Court heard the matter and by the impugned judgment and order dated 25th November, 2008,

decreed the Suit in favour of the Plaintiff. Basically, the Trial Court held that the ground of non-user was made out as Defendant No.1 being the tenant of the premises, was admittedly not using the suit premises and was residing elsewhere. Even on the ground of unlawful subletting the Trial Court held in favour of the Plaintiff.

4 Being aggrieved by this order of the Trial Court, Defendant Nos.1 and 3 both filed separate Appeals before the Court of District Judge, Pune being Civil Appeal No.83 of 2009 and Civil Appeal No.64 of 2009 respectively. After hearing the parties, the Ad-hoc District Judge-4, Pune confirmed the findings of the Trial Court and dismissed both Appeals. Being aggrieved by these orders, the Petitioners in both the Writ Petitions are before me in my extra ordinary, discretionary and equitable jurisdiction under Article 227 of the Constitution of India.

5 In this factual backdrop, the learned counsel appearing on behalf of the Petitioner, submitted that the Trial Court as well as the Appellate Court have completely gone wrong in coming to the conclusion that 1st Defendant was liable to be evicted on the

ground of non-user as well as for unlawfully subletting the Suit premises. He submitted that as far as the ground of non-user is concerned, it was the specific case of Defendant Nos.1 and 3 that even though Defendant No.1 was not residing in the Suit premises, it was being used and occupied by Defendant No.3 who is the brother of Defendant No.1. He submitted that though this premises were let out to Defendant No.1 in his individual name, it was actually taken by Defendant No.1 as a KARTA of the HUF. This being the case, he submitted that the occupation of Defendant No.3 (namely the brother of Defendant No.1) was lawful and it could not be said that the Plaintiff was entitled to a decree under the provisions of Section 16 (1) (n) of the Maharashtra Rent Control Act which entitles the Plaintiff to get a decree of eviction on the ground of non-user. He submitted that the 1st Defendant's brother was undisputedly occupying the Suit premises and therefore the conditions as set out in Section 16 (1) (n) were clearly not met by the Plaintiff to entitle him to a decree under the said provision.

6 As far as the ground of unlawful subletting is concerned, he submitted that the evidence was wholly inadequate

to come to a finding that the premises had been unlawfully sublet by Defendant No.1 to any third party. In this regard, he took me through the reasoning of the Trial Court in paragraphs 8 and 9 which deal with this issue. He submitted that looking at the evidence as analyzed by the Trial Court it could not be said that first Defendant had unlawfully sublet the Suit premises as was sought to be contended by the Plaintiff. For all the aforesaid reasons, he submitted that the impugned orders suffer from perversity and/or an error apparent on the face of the record requiring my interference under Article 227 of the Constitution of India.

7 On the other hand, Mr. Pawar, the learned counsel appearing on behalf of the Plaintiffs, submitted that there was nothing wrong in the impugned orders. He submitted that the Trial Court as well as the Appellate Authority has considered all the facts and the evidence led before them and therefore come to the conclusion that they have. There is nothing even remotely to indicate that the Courts below have not considered the material placed before them in their correct perspective. In this respect he brought to my notice the reasoning and findings of the Trial Court

as well as that of the Appellate Authority to canvass that the conclusions reached by them, on the basis of the evidence led by the parties, was not only fully justified but certainly could not be termed as perverse or suffering from any error of law apparent on the face of the record requiring my interference under Article 227 of the Constitution of India. He submitted that looking to the over all facts and circumstances of the present case, even if I were to come to a different conclusion than the ones reached by the Courts below, the same would be no ground to interfere with the impugned orders in my writ jurisdiction under Article 227 of the Constitution of India. He submitted that for the Petitioners to succeed, they have to establish that the orders passed by the Courts below either suffer from perversity or any error of law apparent on the face of the record, before my writ jurisdiction can be invoked. He submitted that clearly that was not the case in the facts of the present matter, and therefore, this Writ Petition ought to be dismissed.

8 I have heard the learned counsel for the parties at length and have perused the papers and proceedings in the Writ Petition. I have also given my careful consideration to the orders

passed by the Trial Court as well as the Appellate Authority. On the issue of non-user the Trial Court as well as the Appellate Authority have come to a categorical finding that Defendant No.1 is not using the suit premises for residential purposes and for which they were let out to Defendant No.1. The fact that these premises are not being used by Defendant No.1 (Petitioner herein in Writ Petition No.7024/15) is also not in dispute before me and the same is fairly admitted by Mr. Tilak appearing for the Petitioner. It is also not in dispute that the rent receipts issued by the Plaintiff were only in the name of Defendant No.1. Further, even when Defendant No.1 sought to tender rent to the Plaintiff from the period April 2004 onwards and which was refused by the Plaintiff, the same was tendered only on behalf of Defendant No.1. It is looking at all these undisputed facts that the Trial Court disbelieved Defendant No.1's story that even though the rent receipts were issued only in the name of Defendant No.1, the Suit premises were actually let out to Defendant No.1 as a KARTA of the HUF. There was nothing brought on the record by Defendant No.1 to even remotely indicate that this was the case. Looking to all this evidence, that the Courts below came to the conclusion that the story put up by Defendant No.1 that the Suit premises were let

out to him as a KARTA of the HUF, was wholly unbelievable. Looking at the conclusion reached and evidence led before the Courts below, I certainly do not think that the findings given by them can be by any stretch of the imagination be termed as perverse. If Defendant No.1 is unable to establish that the suit premises were let to him as a KARTA of the HUF, and admittedly he is not using the Suit premises, then, he certainly cannot resist the claim of the Plaintiff under the provisions of Section 16 (1) (n) on the basis that the Suit premises were being occupied by his brother.

9 Be that as it may, I must mention here that even this story, namely that the Suit premises were used and occupied by the brother of Defendant No.1 (Defendant No.3 before the Trial Court), has been disbelieved by the Courts below. These findings have been given on the basis of the evidence that was placed before them. Looking to all these facts, I find that the findings of the Courts below that the Plaintiff is entitled to a decree of eviction on the grounds mentioned in Section 16 (1) (n) of the Maharashtra Rent Control Act, 1999 certainly do not suffer from any perversity or error apparent on the face of record requiring

my interference under Article 227 of the Constitution of India.

10 Even as far as the issue of unlawful subletting is concerned, I find that the Trial Court and the Appellate Authority has considered the evidence led by both the parties and thereafter come to the conclusion that Defendant No.1 is guilty of unlawfully subletting the Suit premises. In this regard what is important to note is that it was the specific case of the Plaintiff that firstly the premises were unlawfully sublet to one Mr. Nayar and thereafter to Defendant No.2. As far as Mr. Nayar is concerned, what the Trial court and the Appellate Court have found is that in fact there was a telephone connection in the Suit premises in the name of Mr. Nayar. The Trial Court has in fact even referred to the telephone number assigned. One fails to understand how Mr. Nayar can get telephone connection in the Suit premises without him being in occupation thereof. In fact, the Trial Court specifically came to a finding that Defendant No.1 is unable to give any explanation whatsoever about the presence of a telephone connection in the Suit premises in the name of Mr. Nayar. Apart from this, the Trial Court as well as the Appellate Authority have also taken into consideration postal envelopes that came in the

name of Mr. Nayar as well as Defendant No.2 at the Suit premises. Looking to all these facts, the Trial Court as well as the Appellate Authority were of the view that it can be safely inferred that the Suit premises were unlawfully sublet by Defendant No.1 to the said Nayar initially, and thereafter to Defendant No.2. Even these findings given by both the Courts below is based on the evidence led by the parties. There is nothing that has been brought to my notice to even remotely indicate that these findings, and which were based on the evidence of the parties, suffers from any perversity.

11 For all the foregoing reasons, I find no merit in these Writ Petitions and they are accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

12 At this stage, the learned counsel appearing on behalf of the Petitioners in both the Writ Petitions states that there is some furniture and other material of Defendant No.1 in the Suit premises and seeks indulgence of this Court to remove the same within a period of two weeks from today and undertakes to this

Court that he shall hand over the possession of the Suit premises to the Respondent-Landlord on/before 21st July, 2017. This statement, made on the basis of the instructions received, is accepted as an undertaking to this Court. The learned counsel appearing on behalf of the Respondent-Landlord has no objection. In view of the aforesaid statement, Defendant No.1 is allowed to remove his articles from the Suit Premises within a period of two weeks from today. As per Defendant No.1's statement, he shall hand over vacant and peaceful possession of the Suit Premises to the Plaintiff-landlord on or before 21st July, 2017. Subject to this, the Writ Petitions are dismissed.

(B. P. COLABAWALLA, J.)