

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL REVISION APPLICATION NO.38 OF 2018

Dharmraj Ekanath Dhavalshankh] Applicant

Vs.

Baburao Mallikarjun Ligade] Respondent

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Mr. Prasad P. Kulkarni, for Applicant.

Mr. Sujeet Bugade, for Respondent.

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CORAM : R.G. KETKAR, J.

DATE : 12TH APRIL, 2018.

P.C.

Heard Mr. Kulkarni, learned Counsel for the applicant and Mr. Bugade, learned Counsel for the respondent at length.

2. By this Civil Revision Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C'), the applicant, hereinafter referred to as "defendant" has challenged the judgment and decree dated 16th August, 2014 passed by the learned Civil Judge, Junior Division, Barshi in Regular Civil Suit No.451 of 2004 as also the judgment and decree dated 6th December, 2017 passed by the learned Ad-hoc District Judge-1, Barshi in Regular Civil Appeal No.436 of 2014 (old Regular Civil Appeal No.248 of 2014). By order dated 16th August, 2014, the learned trial Judge decreed the suit under Sections 15, 16 (1) (a), 16 (1) (b) and 16 (1) (g) of the Maharashtra Rent Control Act, 1999 (for short 'Act') and declined to pass decree under Section 16 (1) (c) of the Act. By order dated 6th December, 2017, the learned District

Judge decreed the suit under Section 16 (1), (a), 16 (1) (b) and 16 (1) (g) of the Act and declined to pass decree under Section 15. It is against these decisions, the defendant has instituted the present Civil Revision Application.

3. In support of this application, Mr. Kulkarni strenuously contended that the Courts below committed serious error in decreeing the suit under section 16 (a) of the Act by holding that the defendant has changed user of the suit premises from residential to commercial. He submitted that there is no agreement between the parties specifying user of the suit premises. In any case, the defendant has been keeping furniture for more than 20 years. The plaintiff did not initiate any action till filing of the present suit.

4. Mr. Kulkarni further submitted that the Courts below committed serious error in decreeing the suit under Sections 16 (1) (b) of the Act. He has tendered photographs for my perusal to contend that only tin sheet was constructed. As it is not a permanent structure, the Courts below were not justified in passing the decree under section 16 (1) (b).

5. As far as the ground under section 16 (1) (g) is concerned, he has invited my attention to cross-examination of the plaintiff Baburao where he admitted that he is owner of Survey No.2502, 2510 and 2250 and also owns agricultural field at Alipur Road. He further admitted that Survey No. 2285 and 2499 belong to him. He has three sons by name, Manmath, Prabhuling and Anil. Manmath is residing separately along with his family members. He is residing in the premises owned by Sarojinibai Gaikwad. Laxman, son of Manmath is employed in a Bank and is residing at Bhigwan. Other son Prabhuling is residing at Alibag from last 15 years and he is gainfully employed. He submitted that sons of the plaintiff are not residing in Barshi and, therefore, need pleaded by the plaintiff is neither bona fide nor

reasonable. As the plaintiff owns various properties, the Courts below were not justified in decreeing the suit.

6. On the other hand, Mr. Bugade supported the impugned orders. He invited my attention to paragraph 5 of the written statement, where defendant admitted that the suit premises was given for residential purpose. He submitted that the Courts below concurrently decreed the suit under sections 16 (1) (a), 1(b) and 1(g) of the Act and, therefore, no case is made out for invocation of powers under section 115 of the C.P.C.

7. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. As noted earlier, the Courts below have decreed the suit u/s 16 (1) (a), 16 (1) (b) and 16 (1) (g) of the Act. As far as the ground of change of user u/s 16 (1) (a) and ground of additions and alterations of permanent nature u/s 16 (1) (b) are concerned, the learned District Judge has considered these aspects in paragraphs 16 to 21. In paragraph 21, learned District Judge observed that though the defendant asserted that the suit premises was given to him on rent for commercial and residential purpose, electricity connection admittedly is for residential use. In paragraph 5 of the written statement, defendant admitted that the suit premises were given for the residential purpose. he learned District Judge, therefore, concurred with the trial Court and held that the user of the suit premises is changed from residential to commercial. As far as the ground u/s 16 (1) (b) is concerned, the learned District Judge considered evidence of P.W. 1 Baburao where he deposed that In-Charge C.E.O of Barshi Municipal Council, Shri Tukaram Mundhe, I.A.S had implemented encroachment scheme in Barshi city in the year 2007. During the course of that scheme, unauthorized shed erected by the defendant was removed by the defendant. The defendant again erected the same type of shed and is using the

suit premises for commercial purpose. The learned District Judge also referred to the complaint made to the Municipal Council on 13th April, 2007. It was noted that the defendant did not bring on record any permission from the landlord as also Municipal Council. Photographs produced by Mr. Kulkarni show that the shed is standing on a plinth constructed with cement, brick and other material. In view thereof, I do not find that the Courts below committed any error in decreeing the suit u/s 16 (1) (a) and 16 (1) (b) of the Act.

8. A far as ground u/s 16 (1) (g) is concerned, the learned District Judge has considered this aspect in paragraphs 29 to 34. The learned District Judge also considered the case of the defendant that several properties belong to the plaintiff and in particular in paragraph 31, the learned District Judge observed that CTS No.2502 and 2510/F are in possession of the respective tenants. In paragraph 30, the learned District Judge referred to the evidence of the defendant and suggestion given by the defendant that the deserted daughter of the plaintiff can claim separate residence from her husband under the the Protection of Women from Domestic Violence Act, 2005. For the reasons recorded in paragraphs 29 to 34 of the judgment of the learned District Judge, I do not find that the learned District Judge committed any error in concurring with the learned trial Court's finding on the ground of reasonable and bona fide requirement.

9. As far as hardship is concerned, this aspect is considered by the learned District Judge from paragraphs 35 to 40 and concluded that the plaintiff will suffer greater hardship than the defendant if decree of eviction is not passed in favour of the plaintiff. On the other hand, no hardship would be caused to the defendant, if decree of eviction is passed.

10. Mr. Kulkarni relied on following decisions;

- [1] **Pitambardas Kalyanji Bakotiya Vs. Dattaji Kishanji, 1981 Mh. L.J, 290** to contend that construction of tin shed does not amount to a permanent construction within the meaning of section 16 (1) (b) of the Act.
- [2] **Om Prakash Vs. Amar Singh and others, (1981) 1 SCC 458** to contend that essential element which needs consideration is as to whether the constructions are substantial in nature and they alter the form, front and structure of the accommodation. The nature of constructions, whether they are permanent or temporary is a relevant consideration in determining the question of “material alteration”. A permanent construction needs to make changes in the accommodation on a permanent basis, while a temporary construction is on temporary basis which does not ordinarily affect the form of structure of the building as it can easily be removed without causing any damage to the building.

11. In the present case, the Courts below have decreed the suit u/s 16 (1) (b) of the Act as the defendant has carried out permanent additions and alterations without written permission of the plaintiff. It has also come on record that while implementing removal of encroachment scheme, Municipal Council also demolished the shed which was erected by the defendant. In view thereof, reliance placed on the decisions by Mr. Kulkarni does not advance case of the defendants.

12. In view of aforesaid discussion, it cannot be said that the findings recorded by the Courts below while decreeing the suit under Section 13 (1) (a) 13 (b) and 13 (1) (g) of the Act are contrary to the material on record. The

defendant is not in a position to demonstrate that the findings recorded by the Courts below are perverse being based on no evidence or that on the basis of material on record, no reasonable or prudent person would have come to the conclusion arrived by the Courts below. Merely because on the basis of the material on record, another view is possible that, by itself, is no ground for exercising the powers under section 115 of C.P.C. In the result, the Civil Revision Application fails and the same is dismissed.

13. At this stage, Mr. Kulkarni orally prays for stay of eviction decree for a period of twelve weeks from today. He states that the defendant and all the adult family members residing with him/using the suit premises will file usual undertaking in this Court within two weeks from today, after giving advance copy to the other side incorporating therein that:

- [a] they are in possession and nobody else is in possession of the suit premises;
- [b] they have neither created third party interests nor parted with possession of the suit premises;
- [c] they will hereafter neither create third party interests nor part with possession of the suit premises;
- [d] within two weeks from today, applicants will deposit the entire arrears in this Court, under intimation in writing to the learned Counsel for the plaintiff.
- [e] in case they are unable to obtain suitable orders from the higher Court within four months from today, they will hand over vacant and peaceful possession of the suit premises to the respondents;

14. In view thereof, notwithstanding dismissal of the Civil Revision Application, subject to the defendant filing undertaking in the aforesaid terms

within two weeks from today, this order shall remain stayed for the period of 12 weeks from today. It is expressly made clear that in case the undertaking is not filed in the aforesaid terms within two weeks from today and/or in case applicants commit breach of any of the conditions of the undertaking, the plaintiff will be at liberty to execute decree. Order accordingly.

15. List the Petition for reporting compliance on 26th April, 2018.

[R.G. KETKAR, J.]