

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 1579 OF 2015**

Halimabi Abdul Karim	]	Petitioner
Vs.		
Abdul Kadir Khajamiya Qureshi	]	Respondent

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Mr. Rajesh More, for Petitioner.
Ms. Jayshree N, Gite, for Respondent.

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CORAM : R.G. KETKAR, J.

DATE : 15TH OCTOBER, 2018.

P.C:

Heard Mr. More, learned Counsel for the petitioner and Ms. Gite, learned Counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'defendant' has challenged the judgment and decree dated 10th November, 2008 passed by the 7th Additional Judge, Small Causes Court, Pune in Civil Suit No.530 of 2002 as also the judgment and decree dated 16th December, 2014 passed by the learned Extra Joint Ad-hoc District Judge-1, Pune in Civil Appeal No.50 of 2009. By these orders, the Courts below decreed the suit instituted by the respondent, hereinafter, referred to as 'plaintiff' under section 16 (1) (b) of the Maharashtra Rent Control Act, 1999 (for short 'Act') and directed the defendant to deliver vacant possession of the suit premises, more particularly described in paragraph 1 of the plaint.

3. The plaintiff instituted suit against the defendant for recovery of possession of a room admeasuring 12'x9.6' approximately situate on the ground floor (however, now on the said room one unauthorized room being on the first floor has been constructed) on the property bearing No.1291, Jafferine Lane, Pune – 411 001 (for short 'suit premises') inter alia, on the ground that on or about 6th May, 2002, the defendant demolished the said room in her possession and occupation and had commenced new construction in its place right from the plinth and as such as on today new construction stands in its place. The same has also been done with the help of and/or by joining hands with the other tenant of the plaintiff who is occupying adjacent room. The new construction done by the defendant is not only on the ground floor but has also unauthorizedly and illegally constructed one room above the same as such the defendant is occupying one plus one room. The said construction is carried out by the defendant without prior permission of the plaintiff. The defendant also did not obtain permission from Pune Cantonment Board before carrying out the said construction.

4. By filing the written statement, the defendant denied the contentions of the plaintiff, inter alia, contending that the defendant has carried out repair work after obtaining permission from the Cantonment Board Pune and the construction is not of a permanent nature. On the basis of the pleadings of the parties, the learned trial Judge framed issues. The parties went for trial. After appreciating the evidence on record, the learned trial Judge decreed the suit. The learned trial Judge held that the plaintiff has established that the defendant erected permanent structure on the suit premises without consent of the plaintiff in writing. Aggrieved by that decision, the defendant preferred appeal which was dismissed by the learned District Judge. It is against these orders, the defendant has instituted the present Petition.

5. In support of this Petition, Mr. More submitted that the suit is instituted under section 16 (1) (b) of the Act. The provisions of the Act are not applicable to the cantonment area. Apart from that, he further submitted that the defendant had carried out construction after obtaining permission from the Cantonment Board, Pune and the construction carried out by the defendant is of temporary nature. He has taken out me through the case made out by the plaintiff, written statement filed by the defendant and oral evidence adduced by the parties. He submitted that as the Courts below have passed perverse orders, the Petition deserves to be admitted. On the other hand, Ms. Gite supported the impugned orders. She submitted that after considering the evidence on record, the Courts below concurrently decreed the suit. No case is made out for interfering with the impugned orders.

6. I have considered rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. In so far as contention of the defendant that the Act is not applicable to the premises situate in the cantonment area is concerned, by order dated 24th September, 2018 in **C.R.A No.249 of 2018 [Shireen Dady Adenwalla Vs. Yasmin Dinyar Ilavia]**, I held that provisions of the Act apply to the premises situate in Pune Cantonment area. The plaintiff has specifically come with the case that the defendant has unauthorizedly and illegally constructed one more room above the room on the ground floor. The construction is carried out in T angles, mortar and Shahbad tiles. In support of this case, the plaintiff examined himself at Exhibit 18. A perusal of the cross-examination by the defendant does not even remotely indicate that any attempt was made by the defendant to demolish the case made out by the plaintiff in the plaint as also in the affidavit of evidence. After considering the evidence on record, the Courts below concurrently held that the defendant has carried out permanent construction. The defendant has constructed one room on the first floor when the suit

premises consist of only ground floor admeasuring 12'x9.6'. In other words, the defendant has changed the identity of the suit premises. In view thereof, I do not find that the Courts below committed any error in passing the impugned orders.

7. 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 the evidence on record, no reasonable or prudent person would have come to that conclusion. The defendant is not in a position to show that the findings recorded by the courts below are contrary to evidence on record. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, the Petition fails and the same is dismissed.

[R.G. KETKAR, J.]