

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.2054 OF 2018

Dinesh Purshottam Kapadia & Ors.] Petitioners

Vs.

Nirmalkumar R. Jain & Ors.] Respondents

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Mr. Atul Damle, Sr. Advocate i/b Mr. Rupesh R. Lanjekar, for the Petitioner.
Mr. Mangesh D. Chavan, for respondents No.1 and 2.

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CORAM : R.G. KETKAR, J.

DATE : 22nd MARCH, 2018.

P.C.

Heard Mr. Damle, learned Senior Counsel for petitioners and Mr. Chavan, learned Counsel for respondents No.1 and 2.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as “plaintiffs” have challenged the judgment and order dated 16th January, 2018 passed by the learned Judge, Court Room No.15 of the Court of Small Causes at Mumbai below Exhibit 63 in R.A.E. Suit No.1017/1582 of 2013. By that order, the learned trial Judge allowed the application made by respondent Nos. 1 and 2, hereinafter referred to as ‘defendants No.1 and 2’ and permitted them to deposit arrears of rent of Rs.28,678.70 paise within one month from the date of the order without prejudice to the rights of the plaintiffs. The defendants are further directed to pay the rent at the rate of Rs.85.10 paise per month along with permitted increases as prayed by them without prejudice to the rights of the plaintiffs. The plaintiffs are at liberty to withdraw the amount after its deposit by the

defendants without prejudice to the rights of the parties.

3. Rule. Mr. Chavan, learned Counsel for the respondents waives service on behalf of respondents No.1 and 2. Having regard to the narrow controversy raised in this Petition, at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. In support of this Petition, Mr. Damle submitted that on 4th February, 1989 tenancy agreement was executed between;

[1] Smt. Kamlaben Purshottam, [2] Shri Dinesh Purshottam [3] Shri Kirit Purshottam and [4] Shri Yatin Purushottam, on one hand and defendant No.1 Nirmal Kumar Jain, on the other. He submitted that the plaintiffs have instituted the suit in the year 2013 for seeking possession of 5 Galas (Kataria Na Gala) situate on the 6th floor (Terrace) of House No.128/132, Cavel Street, Mumbai.-400 002. The suit is instituted, inter alia, invoking following grounds viz;

[1] breach of terms of tenancy;

[2] permanent additions and alterations;

[3] Unlawful subletting

5. Mr. Damle submitted that it is the case of the plaintiffs that defendant No.1 is a tenant and he has unlawfully sublet the suit premises to defendant No.2. Defendant No.1 is in possession of three Galas out of five Galas and defendant No.2 is in possession of remaining two Galas who is unlawful occupant. In short, he submitted that the plaintiffs have not invoked ground of arrears of rent as contemplated in Section 15 of the Maharashtra Rent Control Act, 1999 (for short 'Act').

6. Mr. Damle submitted that application Exhibit 63 is filed by defendant No.1 for self and on behalf of his brother, defendant No.2 Arvind R. Jain. The plaintiffs have specifically disputed status of defendant No.2 as a lawful occupant. The learned trial Judge was, therefore, not justified in entertaining and trying the joint application on behalf of defendants No.1 and 2. He has invited my attention to the calculations of arrears of rent of defendant No.1 from April, 1989 to October, 2017 which comes to Rs. 1,13,766.30 paise. The plaintiffs have also issued notice dated 27th November, 2017 to defendant No.1, inter alia, contending that defendant No.1 has failed and neglected to pay rent from April, 1999 till October, 2017, in all amounting to Rs.1,13,766.30. In pursuance thereof, the plaintiffs have also instituted separate suit, R.A.E & R Suit No.283 of 2018 in the Small Causes Court invoking ground of arrears of rent as contemplated under Section 15 of the Act. The said suit is pending.

7. Mr. Damle submitted that instead of filing application in suit No. 283 of 2018, defendants No.1 and 2 have filed application in the present suit. In the application, no provision is mentioned under which the application is filed. The learned trial Judge, however, observed in paragraph 6 that from the pleadings of the application, it appears that the application is filed under Section 15 (3) of the Act. He submitted that application is not made under Order XV-A of the Code of Civil Procedure, 1908 (for short 'C.P.C') and, therefore, the trial Court is not justified in entertaining and deciding the application.

8. On the other hand, Mr. Chavan submitted that the application is made by defendant No.1 for self and on behalf of defendant No.2. The same will be treated as made by defendant No.1 and to that extent, the impugned order may be modified. He submitted that though the application does not

specifically mention any provision under which it is made, it is referably under Order-XV-A of the C.P.C. Under Order-XV-A, the Court has power to direct the tenant to deposit the rent. He relied on decision of this Court in the case of **Shantaram Janu Raut Vs. Claradas Lourds, 1998 (1) Mh. L. J, 639** and in particular paragraph 10 which holds that provisions of C.P.C are applicable to the proceedings instituted under the provisions of the Presidency Small Causes Courts Act, 1882.

9. I have considered the rival submissions of the learned Counsel for the parties. I have also perused the material on record. A perusal of material on record and in particular application made by the defendant No.1 shows that it cannot be said that it is an application under Section 15(3) of the Act. Mr. Chavan stated that application Exhibit 63 may be treated as filed by defendant No.1 alone. Now, it is not in dispute that defendant No.1 is tenant in respect of the suit premises. In view of the decision in the case of **Shantaram Janu Raut** (supra), where the learned Single Judge has considered the decision of Full bench in the case of **Jamnadas Motimal Vanwari Vs. Ishwaribai Tejandas Alwani, 1981 Mh.L.J 701** as also the provisions of Order-XV-A, I do not find that the learned trial Judge has committed any error. In paragraph 10, it was observed thus;

“Reading the provisions of the Rent Act along with the Rules framed thereunder as also the provisions of the Presidency Small Causes Courts Act, 1882, it will be apparent immediately that the procedure to be followed by the Courts either under the Rent Act or under the Presidency Small Causes Courts Act is as far as possible the procedure prescribed by the Code of Civil Procedure, 1908. If that be so, then the provisions of Order XV-A would be attracted. There is no reason to hold otherwise as provisions pertaining to Order XV-A is a provision pertaining to procedure and is not excluded by any specific rule made either under the Rent Rules or the provisions of the Presidency Small Cause Courts Act. Rule 13 read with Rule 16 framed under the Rent Act as also the provision of section 43 of the Presidency Small Causes Courts

Act leave no uncertainty in the matter in as much as it is the provision of the Code of Civil Procedure that would apply in a Suit for eviction filed by a landlord against the tenant for recovery of rent or otherwise”.

10. A perusal of the application Exhibit 63 shows that it is not made under Section 15 (3) of the Act. The present suit is not on the ground of arrears of rent and permitted increases. Thus, the application is clearly referable to Order-XV-A of the C.P.C. In view thereof, I do not find that the learned trial Judge has committed any error in passing the impugned order, save and except, modification of clauses 2 to 4 wherever the word “**defendants**” appears in clauses 2 to 4, the same shall be treated as “**defendant No.1**”. The finding recorded by the learned trial Judge that the application is made “**under Section 15 (3) of the Act**” also stand substituted by “**Order-XV-A of the C.P.C**”. It is made clear that the impugned order will not come in the way of the plaintiffs prosecuting R.A.E & R Suit No.283 of 2018. Subject to this modification and clarification, Petition fails. Rule is discharged with no order as to costs. Liberty to apply for expeditious hearing of the suit. Order accordingly.

[R.G. KETKAR, J.]