

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL REVISION APPLICATION NO.318 OF 2014

The Municipal Corporation of Greater Mumbai		
and another.		Applicants
Vs.		
Kulsum Wd/o Abdul Malik Fitwala		
(since deceased)		
Abdul Malik s/o Abdul Momin Fitwala & Ors.		Respondents

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Mr. P.M. Palshikar a/w Pradeep Patil, i/b U.H. Kedar, for Applicant.

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CORAM : R.G. KETKAR, J.

DATE : 14TH MARCH, 2018.

P.C.

Heard Mr. Palshikar, learned Counsel for the applicants at length.

2. By this application u/s 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C'), the applicants (hereinafter referred to as 'defendants') have challenged the judgment and decree dated 29th September, 2006 passed by the learned Judge, Court Room No.5 of the Court Small Causes at Mumbai in R.A.E. Suit No.4994 of 1978 as also the judgment and decree dated 10th December, 2013 passed by the Appellate Bench of Small Causes Court in A-1 Appeal No.21 of

2008. The learned trial Judge decreed the suit u/s 12, 13(1) (g) and 13 (1) (k) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Act'). As against this the Appellate Court passed decree only u/s 12 of the Act. It is against these orders, the defendants have instituted the present Civil Revision Application.

3. Mr. Palshikar has taken me through paragraphs 10 to 14 of the order of the Appellate Court. He submitted that eviction decree was passed by the Appellate Court u/s 12 of the Act and as there was no stay to the eviction decree, the plaintiffs have taken possession from the defendants.

4. With his assistance, I have perused paragraphs 10 to 14 of the Appellate Court's judgment. In paragraph 10, the Appellate Court noted that the demand notice dated 6th March, 1978 was served upon the defendants, Defendants acknowledged receipt of that notice by letter dated 10th March, 1978. The plaintiffs demanded the rent and contended that the defendants were in arrears on 1st July, 1977 to 28th February, 1978. The defendants did not comply with that notice. They did not pay arrears of rent from 1st July, 1977 at any point of time.

5. In paragraph 12, the Appellate Court recorded that learned Advocate for the defendants has not made any submissions on the ground of arrears of rent. He found himself helpless to point out anything about compliance of the demand notice Exhibit B sent by the plaintiffs. There is no dispute about standard rent of the suit premises. There is also no evidence to indicate that the demand of arrears of rent made in the demand notice was not correct. The demand notice was valid and it was duly served upon the defendants.

In fact, the defendant did not adduce any evidence to substantiate their claim that arrears of rent in respect of the suit premises was sent by them to the plaintiffs at any point of time.

6. In paragraph 13, the Appellate Court considered following decisions;

- [1] Yashodabai Ganpatrao v/s Santosh 2005 (3) Mh. L. J, 1018;
- [2] Gowardhandas V. Gandhi vs. M.H.H Atar, 2000 Vol. 102 (3) Bom.L.R. 128;
- [3] Vasant K. Vaze Vs. Kantabai R. Rathi, 2000 Vol. 102 (3) Bom. L.R.61.
- [4] Narayan v/s Smt. Rampyari, 2001 (3) Mh. L.J.234.

7. In the present case, the suit is instituted in the year 1978. Demand notice dated 6th March, 1978 was duly served on the defendants. They did not comply the notice. In view thereof, section 12(3) (a) of the Act is applicable. I, therefore, do not find that the Appellate Court committed any error in passing the decree u/s 12 of the Act. Even the trial Court had passed eviction decree on various grounds including arrears of rent u/s 12 of the Act.

8. In view thereof, no case is made out for invocation of powers u/s 115 of the C.P.C. The defendants are not in a position to demonstrate that the findings recorded by the Courts below are perverse being based on no evidence or that they are contrary to the evidence on record. The defendants are not in a position to demonstrate that on the basis of the evidence on record, no reasonable or prudent person would have reached conclusions arrived

at by the Courts below. No case is made out for invocation of powers under Section 115 of the C.P.C. Hence, Petition fails and the same is dismissed with no order as to costs.

[R.G. KETKAR, J.]