

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 131 OF 2016

Smt. Bhanumatiben Bhavanji Savla

...Applicant

Versus

Minoo Ankleshria

And Ors

...Respondents

With

Civil Application No.158 of 2017

In

Civil Revision Application NO. 131 OF 2016

....

Mr. Nitin Gangal i/b. Namita Mestry i/b. Navdeep Vora Asso. for the Applicant.

Mr. Vijay Thorat, Senior Advocate a/w. Surel Shah, Ms. Khooshnum Daviervalva, Ms. Ria Panchel i/b. Mulla & Mulla CB & C., for Respondents No.1 to 4.

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CORAM : R. G. KETKAR, J.

DATE : 26th MARCH, 2018

P.C.

1. Heard Mr.Nitin Gangal, learned counsel for the applicant and Mr.VA. Thorat, learned Senior Counsel for the respondents, at length.
2. By this application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicant hereinafter referred to as 'defendant No.3', has challenged the judgment and decree dated 22.6.2009 passed by the learned Judge, Court room No.21, Small

Causes Court at Mumbai in R.A.E. Suit No.1258/3708 of 1990 as also the judgment and decree dated 23.11.2015 passed by the Appellate Bench of the Small Causes Court in (A1) Appeal No.584/2009. By order dated 22.6.2009, the learned trial Judge decreed the suit under Section 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, 'Act'). Though the learned trial Judge held that the respondents No.1 to 5, hereinafter referred to as the 'plaintiffs', establish that defendant No.1 tenant had unlawfully sublet the suit premises to defendant No.3 and that defendants No.2 and 3 are illegal occupants of the suit premises, the learned trial Judge declined to pass decree on the ground of unlawful sub-letting under Section 13(1)(e) of the Act on the ground that the said claim is barred by limitation. The learned trial Judge decreed the suit only under Section 13(1)(g) of the Act. Aggrieved by this decision, defendant No.3 preferred appeal. The plaintiffs preferred cross-objection No.5/2010. By order dated 23.11.2015, the Appellate Court decreed the suit on both the counts, namely, under Sections 13(1)(g) and 13(1)(e) of the Act. The Appellate Court also held that the ground of eviction under Section 13(1)(e) of the Act is not barred by limitation.

3. The matter was heard at length in the morning session and at the request of Mr. Gangal it was kept back in the afternoon session as

Mr. Gangal wanted to take instructions for not pressing this application subject to giving defendant No.3 one years time to vacate the suit premises. Mr. Gangal states that Mahesh Bhawanji Savla, son and constituted attorney of defendant No.3 is present in the Court today. He has tendered photocopy of his Aadhaar card, which is taken on record and marked 'X' for identification. Upon taking instructions from him, Mr. Gangal submits that the applicant will not press this application if one year's time to vacate the suit premises is granted. He assures that defendant No.3 and all adult family members residing with him in the suit premises will give usual undertaking with advance copy to other side within two weeks from today incorporating therein that :

- i. they are in possession and nobody else is in possession of the suit premises;
 - ii. they have neither created third party interests nor parted with possession of the suit premises;
 - iii. they will hereafter neither create third party interests nor part with possession of the suit premises;
 - iv. they will deposit the entire arrears of compensation, if any, in this Court within two weeks from today; and
 - v. they will hand over possession of the suit premises to plaintiff No.4 Shirin M. Ankelsharia on or before 31.3.2019.
4. In view thereof, on the motion made by Mr. Gangal, Civil Revision Application is disposed of as not pressed. The applicant accepts

the correctness of the impugned orders passed by the Courts below. The decree shall not be executed on or before 31.3.2019 subject to the applicant and all adult family members residing with him in the suit premises filing affidavit in the aforesaid terms within two weeks from today. Plaintiff No.4 Shirin M. Ankelsharia is permitted to withdraw the amount deposited by defendant No.3 in the Small Causes Court along with accrued interest, if any. In view of disposal of C.R.A., Civil Application No.158/2017 does not survive and same is disposed of accordingly.

5. List the application for reporting compliance after three weeks.

(R. G. KETKAR, J.)

Deshmane (PS)