

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 296 OF 2011

Mr. Akleshkumar Adhyaprasad Mishra
& Ors

...Applicants

Versus

Shree Tirthankar Co.,
& Ors

...Respondents

....

Mr. D.D. Singh, Advocate for the Applicants.

Mr. Sameer R. Bhalekar, Advocate for the Respondents.

....

CORAM : R. G. KETKAR, J.

DATE : 09th APRIL, 2018

P.C.

1. Heard Mr. D.D. Singh, learned counsel for the applicants and Mr. Sameer Bhalekar, learned 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 applicants, hereinafter referred to as the 'defendants' have challenged the judgment and decree dated 21.1.2003 passed by the learned Judge, Court Room No.24 of the Court of Small Causes at Bombay in R.A.E. & R. Suit No.1105/5822 of 1975 as also the judgment and decree dated 30.11.2010 passed by the Appellate Bench of the Small Causes Court at Bandra, Mumbai in Appeal No.99/2003. By these orders, the Courts below decreed the suit instituted by respondent No.1, hereinafter referred to as the 'plaintiff',

under Sections 12, 13(1)(b), 13(1)(e) and 13(1)(k) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, 'Act').

3. In support of this application, Mr. Singh strenuously contended that basically the suit instituted by the plaintiff itself is not maintainable. He submitted that respondent No.1 is neither the owner nor landlord of the premises, namely, Stable No.1, Line No.1, Municipal House No.1610(1) 134, CTS No.187/57, Aarey Road, Goregaon (East), Mumbai (for short, 'suit premises'). He submitted that the property was owned by S.N. Desai, who in turn had leased out the property to one D.K. Gogate. The plaintiff claims that Gogate had inducted them on the basis of the lease deed executed on 5.4.1968 and subsequent lease deed dated 15.9.1972. He submitted that in fact what was executed by Gogate in favour of the plaintiff was leave and licence agreements and not lease deed. He invited my attention to clauses-1, 5, 6, 7 and 9 of the leave and licence agreement dated 5.4.1968 and recital of the leave and licence agreement dated 15.9.1972. This recital recorded that at the request of the plaintiff, the owner agreed to continue the leave and licence agreement granted to the plaintiff by agreement dated 5.8.1968 for a further period of five years from 5.4.1972 on the same terms and conditions. In other words, he submitted that after 4.4.1977, the

plaintiff ceased to be landlord of the suit premises. The Courts below, however, on the basis of the definition of the expression 'landlord' which includes rent collector held that the plaintiff is a landlord. He relied upon the decision of the Apex Court in the case of **M.M. Quasim v. Manohar Lal Sharma and others**, AIR 1981 SC 1113, and in particular paragraph-14 thereof, to contend that though the definition of the expression 'landlord' in Section 2(d) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 (for short, 'Bihar Rent Act') is couched in very wide language, a mere rent collector though may be included in the expression cannot be treated as a landlord for the purpose of Section 11(1)(c). In the present case also though the expression 'landlord' in Section 5(3) of the Act is of wide amplitude, the plaintiff being a rent collector cannot be treated as a landlord. He further submitted that the Courts below committed serious error in decreeing the suit under Section 12 of the Act in view of the fact that in respect of the suit premises the Court Receiver was appointed. Mr. Singh has invited my attention to the copy of the plaint, written statement and oral evidence adduced by the parties. He submitted that as the Courts below have committed serious error in decreeing the suit, the application requires consideration.

4. On the other hand, Mr. Bhalekar supported the impugned

orders. He invited my attention to the admissions given by DW-1 Vinodkumar Adhyaprasad Mishra. DW-1 Vinodkumar Mishra admitted that his grand father was paying rent of the suit premises to the plaintiffs. The plaintiffs were issuing rent receipts to his grandfather. After the death of his grand-father, his father was paying the rent, electricity charges and water charges to the plaintiff. He stated that the defendants have constructed with the oral permission of the plaintiff taken on telephone.

5. Mr. Bhalekar invited my attention to the written statement filed by the defendants and in particular paragraph-7 where the defendants herein admitted that defendant no.2 is a tenant of the defendants and the plaintiff agreed to letting out the suit premises to third party as the structure was constructed by the legal heirs of the original defendant. He, therefore, submitted that the Courts below were justified in passing the decree under Sections 12, 13(1)(b), 13(1)(e) and 13(1)(k) of the Act.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Insofar as the contention of the defendants that the plaintiff is neither a landlord nor owner of the suit premises is concerned, I do not find any merit in this submission. It is not in dispute

that the leave and licence agreements were executed by Gogates in favour of plaintiff on 5.4.1968 and 15.9.1972. The suit is admittedly filed in the year 1976. That apart, DW-1 Vinodkumar Mishra clearly admitted that his grand-father was paying rent to the plaintiff. After the death of his grand-father, DW-1's father was paying the rent, electricity charges and water charges to the plaintiff.

7. Section 5(3) of the Act defines the expression 'landlord'.

Insofar as the controversy in the present case, it reads thus :

- “5. Definitions.:- In this Act unless there is anything repugnant to the subject or context,-
- (3) "landlord" means any person who is for the time being, receiving, or entitled to receive, rent in respect of any premises whether on his own account or on account, or on behalf, or for the benefit of any other person or as a trustee, guardian, or receiver for any other person or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant, and includes any person not being a tenant who from time to time derives title under a landlord and further includes in respect of his sub-tenant, a tenant who has sub-let any premises; [and also includes in respect of a licensee deemed to be a tenant by section 15A, the licensor who has given such license, [and in respect of the State Government, or as the case may be, the Government allottee referred to in sub-clause (b) of clause (1A), deemed to be a tenant by section 15B, the person who was entitled to receive the rent if the premises were let to a tenant immediately before the coming into force of the Bombay Rents, Hotel and Lodging House Rates Control, Bombay Land Requisition and Bombay Government Premises (Eviction) (Amendment) Act, 1996].”

8. Apart from that even the leave and licence agreement dated 5.4.1968 authorizes respondent No.1 to recover rent and/or compensation payable by the persons actually occupying the building and the structure standing on the land. Mr. Singh submitted that the first leave and licence agreement was in force for a period of four years and the second leave and licence agreement of 1972 was in force for a period of five years and consequently after 1977, the plaintiff ceases to be landlord.

9. Mr. Singh Relied upon the decision of **M.M. Quasim** (supra). The Apex Court considered the definition of the expression 'landlord' in Section 2(d) as also Section 11(1)(c) of the Bihar Rent Act. Section 2(d), 11(1)(c) read with explanation, of the Bihar Rent Act read thus :

“2. Definition.-- In this Act, unless there is anything repugnant in the subject or context,--

(d) "Landlord" includes the person who for the time being is receiving, or is entitled to receive the rent of a building whether on his own account or on behalf of another, or on account or on behalf or for the benefit, of himself and others or as an agent, trustee, executor, administrator, receiver or guardian or who would so receive the rent or be entitled to receive the rent, if the building were let to a tenant;”

“11. Eviction of tenants:

(1) Notwithstanding anything contained in any contract or law to the contrary but subject to the provisions of the Industrial Disputes Act, 1947 and to those of Section 12, where a tenant is in possession of any building, he shall not be liable to eviction therefrom except in execution of a decree passed by the Court on one or more of the following grounds,--

(a) xxxx

(b) xxxx

(c) where the building is reasonably and in good faith required by the landlord for his own occupation or for the occupation of any person for whose benefit the building is held by the landlord;

Provided that where the Court thinks that the reasonable requirement of such occupation may be substantially satisfied by evicting the tenant from a part only of the building and allowing the tenant to continue occupation of the rest and the tenant agrees to such occupation, the Court shall pass a decree accordingly, and fix proportionately fair rent for the portion in occupation of the tenant, which portion shall thenceforth constitute the building within the meaning of clause (aa) of Section 2, and the rent so fixed shall be deemed to be the fair rent fixed under Section 5.

Explanation:In this clause the word "landlord" shall not include an agent referred to in clause (d) of Section 2.”

10. Insofar as the Bombay Rent Act is concerned, Section 13(1)

(g) read with explanation (b) thereof reads thus :

“13. When landlord may recover possession.--

- (1) Notwithstanding anything contained in this Act [but subject to [the provisions of sections 15 and 15A]], a landlord shall be entitled to recover possession of any premises if the Court is satisfied-

XXXXXX

XXXXXX

- (g) that the premises are reasonably and bona fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held [or where the landlord is a trustee of public charitable trust that the premises are required for occupation for the purposes of the trust; or]

Explanation.- For the purposes of clause (g) of sub-section (1), -

- (b) the expression "landlord" shall not include a rent-farmer or rent-collector or estate-manager;”

11. The provisions of the Bihar Rent Act and the Bombay Rent Act, extracted hereinabove, are some what *pari materia*. For the purpose of eviction on the ground of reasonable and bonafide requirement, the expression 'landlord' will not include an agent referred to in clause (d) of Section 2 of the Bihar Rent Act and the expression 'landlord' under Section 13(1)(g) of the Bombay Rent Act will not include a 'rent-farmer' or 'rent-collector' or 'estate-manager'. In the

present case, the Courts below have decreed the suit under Sections 12, 13(1)(b), 13(1)(e) and 13(1)(k) of the Act. The plaintiff has not invoked the ground under Section 13(1)(g) of the Act. In view thereof, the decision in **M.M. Quasim** (supra) does not advance the case of the defendants.

12. That brings me to the decree of eviction under Section 12 of the Act. Mr. Singh submitted that the Court Receiver was appointed in respect of the suit premises. Defendant No.1, however, did not adduce any evidence to show that the rent was regularly paid to the Court Receiver. The Courts below have decreed the suit under Section 12 of the Act. Insofar as the Appellate Court is concerned, this ground is considered in detail from paragraphs-41 to 61. For the reasons recorded in these paragraphs, I do not find that the Appellate Court committed any error while upholding the decree passed by the trial Court under Section 12 of the Act.

13. As far as ground under Section 13(1)(b) of the Act is concerned, the Courts below have passed decree on this ground. Insofar as the Appellate Court is concerned, this aspect is concerned in paragraphs-62 and 64. In paragraph-64, it was noted that DW-1 Vinodkumar Mishra had in a clear and unequivocal terms admitted in

his cross-examination that the existing condition of the suit premises is that of cement concrete walls on three sides of the suit premises. This was confirmed by DW-2 Harishankar Mishra in his cross-examination. The admissions of DW-1 Vinod Mishra and DW-2 Harishankar indicate nature of construction which is of a permanent nature.

14. Insofar as the ground of unlawful sub-letting and non-user is concerned, the Courts below have passed decree on both the grounds. Insofar as the Appellate Court is concerned, this aspect was considered from paragraphs-65 to 72. In paragraph-70, the Appellate Court observed that the heirs of original defendant admitted letting of suit premises to defendant No.2. Even in paragraph-7 of the written statement, defendant No.1 admitted that defendant No.2 is in possession of the suit premises.

15. The Courts below after appreciating the evidence on record, have concurrently decreed the suit under Sections 12, 13(1)(b), 13(1)(e) and 13(1)(k) of the Act. The L.Rs. of defendant No.1 are not in a position to demonstrate that the findings recorded by the Courts below are perverse, being based upon no evidence or that they are contrary to the evidence on record. The defendants are also not in a position to demonstrate that no reasonable person would have arrived at the

conclusions other than arrived by the Courts below. No case is made out for invocation of powers under Section 115 of C.P.C. Hence, C.R.A. fails and the same is dismissed with no order as to costs.

16. At this stage, Mr. Singh orally applies for stay of this order for a period of twelve weeks from today. Mr. Singh states that the applicants are in possession and they have neither created third party interest nor parted with the possession. They will hereafter neither create third party interest nor part with the possession. He further states that the applicants and all adult family members residing with them are ready and willing to give usual undertaking within two weeks from today. Learned Counsel for the respondents opposes said prayer.

17. Having regard to the fact that applicants desire to challenge this order before the Apex Court, in my opinion, ends of justice would be met by staying operation of this order for a period of twelve weeks from today subject to the applicants and all adult members residing with them giving usual undertaking to this Court within two weeks from today with advance copy to other side, incorporating therein that :

- (i) they are in actual possession of the suit premises and nobody else is in possession;
- (ii) they have so far neither created third party interest nor parted with the possession of the suit premises;
- (iii) they will hereafter neither create third party interest nor part

with the possession of the suit premises;

- (iv) they will pay the arrears of rent, if any, to the respondents within two weeks from today; and
- (v) in case the applicants are unable to obtain suitable orders within twelve weeks from today from the higher Court, they will deliver vacant and peaceful possession of the suit premises to the respondent.

18. In view thereof, notwithstanding dismissal of Civil Revision Application, this order shall remain stayed for a period of twelve weeks from today, subject to the applicants filing undertaking in the aforesaid terms within two weeks from today, with copy in advance to the other side. In case the applicants do not file undertaking in the above terms and/or arrears of rent are not paid within two weeks from today, the interim order shall stand vacated without further reference to the Court. List the application for reporting compliance after three weeks. Order accordingly.

(R. G. KETKAR, J.)