

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 4701 OF 2018

Sanatkumar Shivilal Gandhi

...Petitioner

Versus

Dilipkumar Pranjeevan Thakkar

...Respondent

....
Mr. Vijay Nene, Advocate for the Petitioner.

....

CORAM : R. G. KETKAR, J.

DATE : 19th JUNE, 2018

P.C.

1. Heard Mr.Vijay Nene, learned counsel for the petitioner, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as the 'defendant', has challenged the judgment and order dated 31.1.2018 passed by the learned 3rd Jt. Civil Judge, Senior Division, Kalyan below Exhibit-78 in R.C.S. No.323/2011. By that order, the learned trial Judge rejected application Exhibit-78 filed by the defendant seeking permission to lead additional evidence.

3. In support of this Petition, Mr. Nene submitted that the respondent, hereinafter referred to as the 'plaintiff', has instituted the suit against the present defendant by invoking the ground only under Section 16(1)(n) of the Maharashtra Rent Control Act, 1999 (for short, 'Act').

4. During pendency of the suit, the defendant filed application Exhibit-75 on 20.11.2017 for production of the documents set out in the list annexed along with that application. By order dated 20.11.2017, the learned trial Judge allowed that application subject to costs of Rs.200/- to be paid to the Legal aid. Mr. Nene has invited my attention to the documents at pages-29 to 32 which were annexed along with application Exhibit-75 and production of these documents was allowed by the learned trial Judge. These documents *inter alia* are (1) electricity bill of August, 2015, (2) receipt issued by MSEB on 31.8.2015 and (3) rent receipts evidencing payment of rent by the defendant. Though the production was allowed, the learned trial Judge did not mark them as Exhibits.

5. Mr. Nene submitted that on 16.1.2017 the defendant filed application Exhibit-78 to prove the documents, the production of which was already allowed by passing order dated 20.11.2017 below Exhibit-

75. He submitted that the learned trial Judge, however, rejected the application on the ground that the witness from MSEB has already produced the Consumer Personal Ledger. Mr. Nene submitted that having once allowed the production of the documents, the learned trial Judge was not justified in rejecting the application, which will preclude the defendant from proving the contents of documents, production of which is already allowed.

6. I have considered the submissions advanced by Mr. Nene. I have also perused the material on record. As noted earlier, the plaintiff has instituted the suit by invoking the ground only under Section 16(1) (n) of the Act. The suit is instituted on 27.7.2011. In view thereof, the defendant will have to establish that he is using for a continuous period of six months immediately preceding the date of the suit. A perusal of the documents produced along with Exhibit-75 does not indicate that they are for the period relevant for considering user of the suit premises by the defendant. Insofar as the rent receipts are concerned, the plaintiff has not disputed the status of the defendant as a tenant. The electricity bill dated 20.8.2015 and the receipts issued by MSEB on 31.8.2015 are post institution of the suit. The learned trial Judge has observed that the Consumer Personal Ledger is already exhibited. In view thereof, I do not find that the learned trial Judge has committed

any error in rejecting the application. The electricity bill dated 20.8.2015 and the receipt dated 31.8.2015 issue by MSEB are not relevant for the purpose of ground under Section 16(1)(n) of the Act. Hence, the Petition fails and the same is dismissed.

7. It is made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by section 105(1) of C.P.C. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)