

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL REVISION APPLICATION NO.215 OF 2018

Govind Bhayaram Bamniya & Ors.	]	Applicants
Vs.		
Eknath alias Joseph Dominic Koli & Ors.	]	Respondents

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Mr. Durgaprasad Sabnis a/w Mr. Durgesh Kulkarni i/b Lex Firmus, for Applicants.
Mr. Clive D'Souza, for Respondents No.1 to 6.

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CORAM : R.G. KETKAR, J.

DATE : 18th JULY, 2018.

P.C:

Heard Mr. Sabnis, learned Counsel for the applicants and Mr. D'Souza, learned Counsel for the respondents No.1 to 6 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 “defendants” have challenged the judgment and decree dated 15th March, 2013 passed by the learned Judge, Court Room No.36 of the Court of Small Causes at Mumbai (Bandra Branch) in R.A.E Suit No.380 of 1988 as also the judgment and decree dated 7th February, 2018 passed by the Appellate Bench of the Court of Small Causes at Mumbai in (A-1) Appeal No.37 of 2013. By order dated 15th March, 2013, the learned trial Judge decreed the suit filed by respondents No.1 to 6, hereinafter referred to as “plaintiffs” on two grounds viz;

[1] additions and alterations of permanent nature without consent of the plaintiffs/landlords;

[2] the plaintiffs require the suit premises reasonably and bona fide

(viz; section 13 (1) (b) and section 13 (1) (g) respectively) under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Act'). Aggrieved by this decision, the defendants preferred appeal before the Appellate Court. By order dated 7th February, 2018, the Appellate Court dismissed the appeal. The Appellate Court confirmed the decree only under section 13 (1) (g) of the Act and declined to pass decree under section 13 (1) (b) of the Act. It is against these orders, the defendants have instituted the present Civil Revision Application.

3. The matter was heard at length on 28th June, 2018. During the course of hearing, I indicated that I would like to hear the parties on the question, whether the Appellate Court was justified in declining to pass decree under section 13 (1) (b) of the Act. The parties were also directed to address this issue in the light of the decision of the Apex Court in the case of **Banarsi and others Vs. Ram Phal (2003) 8 Supreme Court Cases 606**. Accordingly, the learned Counsel for the parties have advanced elaborate submission.

4. In support of this Application, Mr. Sabnis strenuously contended that the Courts below were not justified in decreeing the suit under section 13 (1) (g) of the Act. He submitted that the defendants though have constructed additional room, the same is not on the land belonging to the plaintiffs. The defendants have constructed a permanent structure adjoining to the suit premises. As an additional room is not constructed on the land belonging to the plaintiff but on the land belonging to Mumbai Port Trust (for short 'M.P.T'), question of obtaining permission of the plaintiffs did not arise. Mr. Sabnis has

invited my attention to the judgments of the Courts below. In particular, he submitted that the Appellate Court was justified in declining to pass decree under section 13 (1) (b) of the Act. The Appellate Court has observed in paragraph 11 that the rent receipts at Exhibit -90 (1) (2), 91 Assessment Bill, receipt Exhibit-90, 93 and 94 show that defendants are paying ground rent to M.P.T and taxes to Municipal Corporation of Greater Mumbai (for short 'Corporation'). Area of 06.096 x 06.096 square meter is mentioned in the rent receipts. The learned trial Judge ignored this evidence and held that the additional structure is constructed on the land belonging to the plaintiffs. He submitted that the learned trial Judge committed serious error in holding that additional structure is constructed on the land owned by the plaintiffs.

5. Mr. Sabnis also relied on the decision of this Court in the case of **Pandu Mahadu Sandim (deceased) Vs. Dattajirao Dadasaheb Patankar** (deceased) as also section 13 (1) (b) of the Act to contend that the defendants have not erected any permanent structure on the premises of the plaintiffs. He, therefore, submitted that application requires consideration.

6. On the other hand, Mr. D'Souza supported the impugned orders. He submitted that in view of the decision of the Apex Court in the case of **Banarsi and others** (supra), the plaintiffs can support the decree of eviction passed by the Appellate Court and contend that the Appellate Court should have passed eviction decree even on the ground of additions and alterations of permanent nature without written permission of the landlord in terms of section 13 (1) (b) of the Act without filing cross objection. He submitted that the Appellate Court did not consider that entire CTS No.209 was given to the plaintiff's grandmother. He submitted that the learned trial Judge has considered following documents;

- [1] Sanad dated 30th April, 1938 at Exhibit 49 issued by Collector
- [2] Property card Exhibit 50
- [3] Map at Exhibit 51
- [4] Letter dated 1st June, 1973 Exhibit 56 issued by Assistant Superintendent, Bandra Port, Mumbai.

for holding that the additional room constructed by the defendants is on the land belonging to the plaintiffs. He submitted that the learned trial Judge also considered the rent receipts in paragraph 26 as also letter dated 1st June, 1973 issued by Assistant Supervisor, Bandra Port, Mumbai, Exhibit 56. After considering these documents, the learned trial Judge concluded that C.T.S No.209 belongs to the plaintiffs and the additional room admeasuring 10'x12' is situate on the property belonging to the plaintiffs. He, therefore, submitted that eviction decree may be confirmed on the ground of additions and alterations of permanent nature under section 13 (1) (b) in addition to ground under section 13 (1) (g) of the Act.

7. I have considered rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. As noted earlier, the learned trial Judge has decreed the suit under section 13 (1) (g) of the Act. The learned trial Judge also held that the plaintiffs will suffer greater hardship in case eviction decree is not passed. The learned trial Judge has discussed ground of reasonable and bona fide requirement as also comparative hardship in paragraphs 31 to 40. In paragraph 31, the learned trial Judge noted that in all five families are residing in absolutely crammed condition. The learned trial judge noted that family of plaintiff No.1 (a) comprising of four members is occupying room admeasuring 159 square feet. Family of plaintiff No.1(b) comprising of his wife and two children is occupying premises admeasuring 156 square feet. Family of plaintiff No.1(c) comprising of himself, wife and two

children is occupying premises admeasuring 150 square feet on the attic floor. Family of plaintiff No.1(d) comprising of himself, his wife and two children is occupying premises admeasuring 96 square feet on the attic floor. Plaintiff No.1 (e) is a widow. She has one daughter. She often comes to visit her brothers at the suit premises but cannot stay overnight due to lack of accommodation. Family of plaintiff No.2 comprising of himself, his wife and two children is occupying attic floor admeasuring 150 square feet. In paragraph 34, the learned trial Judge noted that there are 20 members in the family of the plaintiff. After considering the evidence on record, the learned trial judge held that need pleaded by the plaintiffs is both reasonable and bona fide. In paragraphs 37 to 40, the learned trial Judge considered the question of comparative hardship and answered in favour of the plaintiffs.

8. In so far as ground of additions and alterations of permanent nature without written permission of the landlord is concerned, the learned trial Judge has considered this aspect from paragraphs 20 to paragraphs 29. After considering the evidence on record as also case of the defendants in the written statement and the evidence, the learned trial Judge held that the plaintiffs have established that defendants have erected permanent structure i.e additional room adjacent and connected to the suit premises and additional room is on the land belonging to the plaintiffs. I, therefore, do not find that the learned trial Judge has committed any error in decreeing the suit under sections 13 (1) (b) and 13 (1) (g) of the Act.

9. In so far as the Appellate Court is concerned, the Appellate Court has considered ground under section 13 (1) (g) from paragraphs 13 to 16. In so far as comparative hardship is concerned, the Appellate Court also noted that there are five families residing in a very insufficient premises. In paragraph 16, the Appellate Court considered the question of comparative

hardship and upheld findings of the learned trial Judge under section 13 (1) (g) and comparative hardship.

10. In so far as the ground under section 13 (1) (b) is concerned, the Appellate Court has considered this aspect in paragraphs 9 to 12. In paragraph 11, the Appellate Court observed that the learned trial Judge has ignored ground rent receipts Exhibit-90 (1) (2), Exhibit 92- Assessment Bill, receipt Exhibit-90, 93 and 94 and the fact that the defendants are paying ground rent to M.P.T and taxes to the Corporation. In my opinion, the Appellate Court failed to consider that though the defendants came with the case that additional room is constructed on the land belonging to M.P.T, they did not examine concerned officer from M.P.T to substantiate their case. That apart, the Appellate Court ignored letter dated 1st June, 1973 at Exhibit 56 addressed by the Assistant Supervisor, Port, Bandra as also the fact that entire Survey No.209 was given to the plaintiffs by a sanad dated 30th April, 1938 issued by the Collector. In fact, there was no material produced by the defendants to substantiate their case that the additional room is situate on the land other than CTS 209. The Appellate Court has not held that ground rent receipts Exhibit 90 (1) (2) 91 are in respect of the property other than CTS No.209. In other words, findings recorded by the Appellate Court are based on surmises and conjunctures. The Appellate Court ought to have recorded a categorical finding on the basis of rent receipts etc that this additional room is not situate at CTS No.209 and is situate in the property other than CTS No.209.

11. In the case of **Banarsi and others** (supra), the Apex Court referred to C.P.C amendment of 1976 and observed that insertion made in sub-rule-(1) makes it permissible to file cross objection against a finding. A respondent may defend himself without filing any cross-objection to the extent to which decree is in his favour, however, if he proposes to attack any part of

the decree, he must take cross-objection. The amendment inserted by the 1976 is clarificatory and is also enabling. The Apex Court referred to three situations which are as under;

- (i) The impugned decree is partly in favour of the appellant and partly in favour of the respondent.
- (ii) The decree is *entirely* in favour of the respondent though an *issue* has been decided against the respondent.
- (iii) The decree is *entirely* in favour of the respondent and all the *issues* have also been answered in favour of the respondent but there is a finding in the judgment which goes against the respondent.

12. In paragraph 11, it was observed that in type of the case (i), it was necessary for the respondent to file an appeal or take cross-objection against the part of the decree which is against him if he seeks to get rid of the same though that part of the decree which is in his favour, he is entitled to support without taking any cross-objection. In type of the cases (ii) and (iii) pre-amendment CPC did not entitle nor permit the respondent to take any cross-objection as he was not the person aggrieved by the decree. Under the amended CPC, read in the light of the explanation, though it is still not necessary for the respondent to take any cross-objection laying challenge to any finding adverse to him as the decree is entirely in his favour and he may support the decree without cross-objection; the amendment made in the text of sub-rule (1), read with explanation newly inserted, gives him a right to take cross-objection to a finding recorded against him either while answering an issue or while dealing with an issue.

13. In the present case, without filing cross-objection, the plaintiffs can support eviction decree and attack finding of the Appellate Court in respect of ground under section 13 (1) (b).

14. In the present case, the Appellate Court has passed eviction decree under section 13 (1) (g) of the Act and declined to pass decree under section 13 (1) (b) of the Act. The plaintiffs while supporting entire decree can also urge before this Court that the Appellate Court ought to have passed decree even under section 13 (1) (b) of the Act.

15. In the light of above discussion, in my opinion, the Appellate Court ought to have decreed the suit even on the ground of additions and alterations of permanent nature without written permission of the landlord as contemplated by section 13 (1) (b) of the Act. Mr. Sabnis relied on a decision in the case of **Pandu Mahadu Sandim (deceased)**. In that case, the Appellate Court recorded a clearcut finding that permanent structure was constructed by the tenant on the land which was not leased out to him. This decision does not advance case of the defendant.

16. In view thereof, it cannot be said that the findings recorded by the Courts below while decreeing the suit under Section 13 (1) (g) of the Act are contrary to the material on record. The learned trial Judge decreed the suit under section 13 (1) (b) and 13 (1) (g) of the Act. The Appellate Court declined to pass decree under section 13 (1) (b) of the Act and passed decree only under section 13 (1) (g). For the reasons recorded earlier, respondents No.1 to 6 are entitled to support the eviction decree even under section 13 (1) (b) of the Act. 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 on the basis of material on record, no reasonable or prudent person would have come to the conclusion arrived at by the Courts below. Defendants are not in a position to show that the findings are contrary to the evidence on record. Merely because on the basis of the material on record, another view is possible that, by itself, is no ground for exercising the

powers under section 115 of C.P.C. In the result, the Civil Revision Application fails and the same is dismissed.

[R.G. KETKAR, J.]