

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application (ST) NO. 10033 OF 2018

Shri. Mustafa Husainbhai Adamali

And Ors.

...Applicants

Versus

Shri. Surajprakash Thakurdas Kukreja

...Respondent

....

Mr. Ranjit Thorat, Senior Advocate a/w. Abhay Dhadiwal a/w. Rahil Jhaveri i/b. Jayakar & Partners, for the applicants.

Mr. Ajinkya J. Jaibhave, Advocate for the Respondent.

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CORAM : R. G. KETKAR, J.

DATE : 05th JULY, 2018

P.C.

1. Heard Mr.Ranjit Thorat, learned Senior Counsel for the applicants and Mr.Ajinkya Jaibhave, learned Counsel for the respondent, 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 9.4.2013 passed by the learned 2nd Civil Judge, Junior Division, Nashik Road in R.C.S. No.153/2010 as also the judgment and decree dated 5.10.2017 passed by the learned District Judge-3, Nashik in Civil Appeal

No.127/2013. By these orders, the Courts below decreed the suit instituted by respondent No.1, hereinafter referred to as the 'plaintiff', under Section 16(1)(g) of the Maharashtra Rent Control Act, 1999 (for short, 'Act') and directed the defendants to hand over possession of the shop bearing property No.3, House No.3, having East-West length 33 feet and North-South width approximately 11 feet, total area 363 sq. ft. i.e. 34 sq. mtr. having shop at basement, (for short, 'suit premises'), as more particularly described in the plaint.

3. In support of this application, Mr. Thorat submitted that during pendency of the appeal, the defendants filed application Exhibit-33 under Section 107 read with Order XLI Rule 27(1)(b) of C.P.C. for production of certified copy of the lease deed and also for issuing summons to the officials attached to Cantonment Board for giving evidence as regards the lease property i.e. House No.24. By order dated 7.8.2017, the learned District Judge, after referring to the decision of Apex Court in ***Union of India v. Ibrahim Uddin and another, (2012) 8 SCC 148***, opined that the application for additional evidence will be heard at the time of final hearing of the appeal.

4. Mr. Thorat submitted that while deciding the appeal, the learned District Judge came to the conclusion that the defendants have

not invoked clause (a) or (aa) of Order XLI Rule 27(1). The defendants have filed application under clause (b) of sub-rule (1) of Order XLI Rule 27 of C.P.C. which lays down that the Appellate Court may allow production of additional evidence if it requires said evidence to enable it to pronounce the judgment. The learned District Judge held that there is sufficient material on record to decide the appeal in either way and, therefore, the Appellate Court does not require any document or oral evidence of any witness. Mr.Thorat submitted that this precluded the defendants to establish that House No.24 was given by the Cantonment Board on lease basis to the defendants and not on ownership basis. The Courts below, however, proceeded on the footing that house No.24 belongs to the defendants where they can carry on their business of giving furniture on rental basis. He, therefore, submitted that the learned District Judge committed error in precluding the defendants to substantiate their claim based on the lease deed.

5. On merits, Mr. Thorat submitted that the Courts below failed to appreciate that the plaintiff's witness admitted that the shop premises where the business of Emperor Watch is carried was given to his father on rental basis and thereafter landlady was issuing rent receipts in the name of the plaintiff. He invited my attention to the finding recorded by the learned trial Judge in paragraph-14 to the effect that the extract of

register of establishment at Exhibit-30 & 31 shows that “Hi-Fi Collection” and “Emperor Watch” are in the name of the plaintiff's brother. He submitted that said finding clearly ignores the admission given by the plaintiff's witness during the cross-examination. In short, he submitted that the plaintiff has other premises that will satisfy his need. As against this, the Courts below proceeded on the footing that the defendants admitted in the cross-examination that they are carrying on business of giving furniture on rental basis in house No.24. He submitted that this is also contrary to the evidence of the plaintiff's witness where he deposed that the defendants are storing furniture in House No.24. In other words, the plaintiff's witness did not depose that the defendants are carrying on business in house No.24. In short, Mr.Thorat submitted that the Courts below committed error in holding that greater hardship will be caused to the plaintiff in the event of refusal of the eviction decree. He, therefore, submitted that the application requires consideration.

6. On the other hand, Mr. Jaibhave supported the impugned orders. He submitted that though the defendants came with the case that the plaintiff has shop where he is carrying on business in the name “Hi-Fi Collection” and “Emperor Watch”, no evidence was adduced in order to substantiate said contention. The extract of Register of

Establishment at Exhibits-30 and 31 shows that “Hi-Fi Collection” is in the name of Ashok Kukreja and “Emperor Watch” is in the name of Manohar Kukreja, who are the brothers of the plaintiff. He submitted that defendant No.1 admitted that he had not filed on record Shop Act licence showing “Emperor Watch” in the name of the plaintiff. He submitted that as the Courts below have decreed the suit after appreciating the evidence on record, no case is made out for interfering with the impugned orders.

7. I have considered the rival submissions advanced by the learned Counsel for the parties. I have also perused the material on record. Mr. Thorat submitted that the Cantonment Board had given on lease basis House No.24 and not on ownership basis. Even if I accept the submission of Mr. Thorat that house No.24 is given on lease basis by the Cantonment Board and is not on ownership of the defendants, the fact remains that house No.24 consists of ground + first floor. It has come on record that the area of house No.24 is around 4000 sq. ft. In evidence, the plaintiff's witness deposed that the defendants are carrying on business of giving furniture on rental basis. He admitted that the defendants have stored the furniture in house No.24. Relying on this part of testimony, Mr. Thorat submitted that the defendants are not carrying on business of giving the furniture on rental basis in house

No.24. It is not possible to accept this submission. A perusal of cross-examination of defendants' witness clearly shows that he denied the suggestion given to him that he can carry on business of furniture in house No.24. He thereafter admitted that he is carrying on business of giving furniture on rental basis in house No.24. This aspect was considered by the Courts below.

8. In paragraph-16, the learned trial Judge noted the submission advanced on behalf of the defendants that house No.24 is used by defendant No.1 for his business of furniture. In cross-examination defendant No.1 admitted that he carries on business of furniture from house No.24. After considering the material on record and the fact that the defendants are carrying on business in house No.24, the learned trial Judge held that greater hardship will be caused to the plaintiff in case the eviction decree is not passed. The learned trial Judge also held that the plaintiff has established that the requirement pleaded by the plaintiff is both reasonable and bonafide.

9. Insofar as the District Court is concerned, the ground of bonafide requirement and question of hardship is considered from paragraphs-19 and 20. In paragraph-19, the learned District Judge observed that the plaintiff came with a specific case that his wife is

dealing in business of ready made garments and doing her business by visiting door to door and he requires the suit premises for personal use and occupation. The defendants did not challenge the fact that the wife of plaintiff is doing business of ready made garments, but, denied that she is doing said business by visiting houses of her customers. After considering the evidence on record, the learned District Judge held that the plaintiff is not having any other alternate accommodation in order to start their business and, therefore, he requires the suit premises reasonably and bonafide.

10. In paragraph-20, the learned District Judge dealt with the question of comparative hardship and held that greater hardship will be caused to the plaintiff than by the defendant in the event of refusing to passing of the decree.

11. Mr.Thorat submitted that the learned District Judge committed error in precluding the defendants from adducing additional evidence. I do not find any merit in this submission. The defendants want to establish that house No.24 does not belong to them and is given on lease basis by the Cantonment Board. The fact of the matter is that the defendants are having alternate viz. premises house No.24 which even as per their own showing is given on lease basis by the Cantonment

Board.

12. Thus the Courts below after appreciating the evidence on record have concurrently held that the plaintiff has established that his requirement is both reasonable and bonafide and greater hardship will be caused to the plaintiff in case the eviction decree is not passed. The findings recorded by the Courts below cannot be said to be perverse.

13. The defendants were 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 were also not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the Courts below. Merely because on the basis of evidence on record another view is possible, that itself is no ground for invocation of powers under Section 115 of C.P.C. Hence, no case is made out for invocation of powers under Section 115 of C.P.C. Civil Revision Application fails and the same is dismissed with no order as to costs.

14. At this stage, Mr. Thorat orally prays for stay of the eviction decree for a period of eight weeks from today. Mr.Thorat 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/using the suit premises are ready and willing to give usual undertaking within four weeks from today. Learned Counsel for the respondent opposes said prayer.

15. 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 the eviction decree for a period of eight weeks from today subject to the applicants and all adult members using the suit premises giving usual undertaking to this Court within four weeks from today incorporating therein:

- (i) that they are in actual possession of the suit premises and nobody else is in possession;
- (ii) that they have so far neither created third party interest nor parted with the possession of the suit premises;
- (iii) that they will hereafter neither create third party interest nor part with the possession of the suit premises;
- (iv) that they will deposit the arrears of rent, if any, within four weeks from today in the trial Court; and
- (v) that in case the applicants are unable to obtain suitable orders within eight weeks from today from the higher Court, they will deliver vacant and peaceful possession of the suit premises to the respondent.

16. In view thereof, notwithstanding dismissal of Civil Revision Application, the eviction decree shall remain stayed for a period of eight weeks from today, subject to the applicants filing undertaking in the aforesaid terms within four 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 deposited in the trial Court within four weeks from today, the interim order shall stand vacated without further reference to the Court.

17. List the application for reporting compliance on 03.8.2018.
Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)