

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL REVISION APPLICATION NO.203 OF 2015**

Pradeep Motilal Gandhi & Anr.	]	Applicants
Vs.		
Shri Jain Shwetambar Murtipujak	]	
Sangh & Ors.	]	Respondents

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Mr. Vikram Walawalkar i/b Mr. Suresh M. Sabrad, for Applicants.
Mr. S.M. Gorwadkar, Sr. Advocate i/b Mrs. Indrayani Patani, for Respondents
No.1, 3 and 4.

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CORAM : R.G. KETKAR, J.

DATE : 2ND APRIL, 2018.

P.C.

Heard Mr. Walawalkar, learned Counsel for the applicants and Mr. Gorwadkar, learned Senior Counsel for respondents No.1, 3 and 4 at length.

2. By this application under Section 115 of the Code of Civil Procedure, 1908, (for short 'C.P.C'), the applicants have challenged the judgment and decree dated 16th February, 2015 passed by the learned District Judge-2, Niphad in Regular Civil Appeal No.14 of 2005. By that order, the learned District Judge allowed the appeal preferred by respondents, hereinafter referred to as "plaintiffs" and quashed and set aside the judgment and decree dated 29th December, 2004 passed by the learned Civil Judge, Junior Division, Chandwad in Regular Civil Suit No.104 of 1988. The learned District Judge

decreed the suit under Section 13 (1) (b) and 13 (1) (g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short “Act”) and directed the defendants to hand over vacant possession of the residential premises admeasuring 300.4 square meters bearing City Survey No.773 and Grampanchayat Property No.795 along with open space adjoining to the constructed house (for short “suit premises”) situate at Chandwad, Dist. Nashik within one month from the date of the order. The learned District Judge also ordered inquiry into mesne profits under Order-XX, Rule-12 (1)(c) of the C.P.C from the date of filing of the suit till handing over possession of the suit premises.

3. In support of this Application, Mr. Walawalkar submitted that the plaintiffs have initially issued notice in the year 1972. Subsequently, before instituting the suit, second notice was issued in the year 1988. He has taken me through paragraphs 5 and 6 of the plaint where the plaintiffs have pleaded ground of bona fide and reasonable requirement under Section 13 (1) (g) of the Act. He has also invited my attention to deposition of the witnesses examined on behalf of the plaintiffs as also the findings recorded by the learned District Judge. In paragraph 30, the learned District Judge dealt with the ground of bona fide requirement. Mr. Walawalkar submitted that the findings recorded by the learned District Judge in paragraph 30 are not borne out from the pleadings as also evidence adduced by the plaintiffs. In short, he submitted that the findings are not based on the case made out by the plaintiffs in the plaint as also the evidence adduced in support of their case. The findings recorded by the learned District Judge are perverse.

4. Mr. Walawalkar submitted that the learned District Judge decreed the suit under Section 13 (1) (b) of the Act. He submitted that initially that ground was not pleaded in the suit. By way of amendment, paragraph 6(a) was

added. In paragraph 6(a), the plaintiffs alleged that in the open space on the western side, the defendants have made permanent construction. He invited my Attention to the additional written statement filed by the defendants dealing with contentions raised in paragraph 6(a) of the plaint to contend that in the first place, the alleged permanent construction is not carried out in the suit premises, secondly, the defendants denied carrying out any construction at all. He submitted that after appreciating the evidence on record, the learned trial Judge dismissed the suit. He invited my attention to the findings recorded by the learned trial Judge in paragraphs 26 to 36 as regards carrying out permanent construction in paragraphs 26 to 36. He submitted that the learned District Judge while dealing with the issue of hardship observed in paragraph 29 that the defendants have sold two houses and they could have purchased another house out of the proceeds of those houses. He submitted that open land was sold as far as back in the year 1964 and other house was sold in the year 1980. Suit is instituted in the year 1988. The learned District Judge was, therefore, not justified in answering issue of comparative hardship in favour of the plaintiffs. He submitted that as the learned District Judge has reversed the finding of the trial Court and the findings of the Appellate Court are perverse, the Civil Revision Application requires consideration.

5. On the other hand, Mr. Gorwadkar supported the impugned order. He submitted that the findings recorded by the learned District Judge in paragraph 30 in respect of ground under section 13 (1) (g) are based upon the case pleaded by the plaintiffs as also the evidence adduced in support of that case. As far as question of comparative hardship is concerned, he has invited my attention to the trial Court's judgment and in particular paragraph 23. He submitted that the learned District Judge upon appreciating the evidence on record has accepted the case of the plaintiffs under Section 13 (1) (g) of the Act.

6. As far as ground under Section 13 (1) (b) is concerned, he submitted that the defendants did not come with the case that the alleged permanent construction does not form part of the suit premises. He has taken me through the findings recorded by the trial Court in that regard as also finding recorded by the Appellate Court. He, therefore, submitted that no case is made out for interfering with the impugned order under Section 115 of the C.P.C.

7. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. In so far as ground of bona fide requirement is concerned, in paragraph 5 of the plaint, the plaintiffs specifically asserted that the suit premises is required for construction of Dharmashala as also for making arrangement of the devotees who come from outside. In support of this case, the plaintiffs examined P.W.1 Ashok Kapadiya. In paragraph 7 of his deposition, he specifically reiterated contentions raised in paragraph 5 of the plaint. It is also material to note that the plaintiff is a public charitable trust. Section 13 (1) (g) of the Act reads thus:

“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”.

A perusal of above extracted portion shows that where the landlord is a trustee of public charitable trust and that the premises are required for occupation for the purpose of the Trust, the Trust can institute the proceedings. Trustees of the Trust can seek eviction under Section 13 (1) (g) of the Act. A comparison of the first part with the later part shows that whereas in respect of the landlord other than the public charitable trust, the plaintiff/landlord has to

plead and prove that the suit premises are required reasonably and bona fide for occupation by himself or by any person for whose benefit the premises are held in respect of a public charitable trust, the trustees have to plead that premises are required for occupation for the purpose of the trust.

8. In paragraph 30, the learned District Judge has referred to the case made out by the plaintiffs under Section 13(1) (g) of the Act. The findings recorded by the learned District Judge in paragraph 30 cannot be said to be based on no evidence or contrary to the evidence on record. In other words, it cannot be said that the findings are perverse.

9. As noted earlier, during pendency of the suit, the plaint was amended. Paragraph 6(a) was added. The defendants filed additional written statement. A perusal of the additional written statement dated 26th August, 2003 does not indicate that the defendants came with case that the alleged permanent construction is not carried out in the suit premises. That apart, description of the suit premises itself shows that open space is also part of the suit premises. The learned District Judge has considered the ground under Section 13 (1) (b) in paragraphs 27 and 28. In paragraph 27, the learned District Judge noted that septic or water tank is constructed towards the western side of the suit premises. In paragraph 28, the learned District Judge dealt with the report of the Commissioner as also evidence of Photographer. The learned District Judge noted that the evidence of photographer as also Commissioner pointed out that there were walls erected in the open space of the suit premises and also foundation was constructed at the suit site. Only difference between the evidence of Photographer and Commissioner was that the Photographer stated that the walls are up to 5 to 6 feet height and the Commissioner deposed that it is up to 1 to ½ feet. The learned District Judge commented upon it by saying that when the Commissioner visited the suit

spot, the defendants might have demolished those walls to destroy the evidence and the wall remained only up to the height of one to one and half feet. Construction of foundation and water tank and septic tank specifically was not disputed on the part of the defendants. There was no written permission from the plaintiffs for carrying out permanent construction. The learned District Judge accordingly decreed the suit under Section 13(1) (b) of the Act. After perusing the material on record, I do not find that the learned District Judge committed error in decreeing the suit under Section 13 (1) (g) of the Act as also 13 (1) (b).

10. In view thereof, it cannot be said that the findings recorded by the learned District Judge while decreeing the suit under Section 13 (1) (g) and 13 (1) (b) of the Act are contrary to the material on record. The defendants are not in a position to demonstrate that the findings recorded by the Appellate Court are perverse being based on no evidence or that on the basis of material on record, reasonable or prudent person would have come to the conclusion arrived by the Appellate Court. 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.

11. At this stage, Mr. Walawalkar orally prays for continuation of interim order dated 18th December, 2005 for a period of four months from today. He states that the applicants and all the adult family members residing with them will file usual undertaking in this Court within three weeks from today, after giving advance copy to the other side incorporating therein that:

- [a] they are in possession and nobody else is in possession of the suit premises;
- [b] they have neither created third party interests nor parted with possession of the suit premises;
- [c] they will hereafter neither create third party interests nor part with possession of the suit premises;
- [d] within three weeks from today, applicants will deposit the arrears, if any, in this Court, under due intimation to the respondents.
- [e] in case they are unable to obtain suitable orders from the higher Court within four months from today, they will hand over vacant and peaceful possession of the suit premises to the respondents;

12. In view thereof, notwithstanding dismissal of the Civil Revision Application, subject to the applicants filing the undertaking in the aforesaid terms within three weeks from today, this order shall remain stayed for the period of four months from today. It is expressly made clear that in case the undertaking is not filed in the aforesaid terms within three weeks from today and/or in case applicants commit breach of any of the conditions of the undertaking, the respondents will be at liberty to proceed with the matter in accordance with law. Order accordingly.

[R.G. KETKAR, J.]