

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL REVISION APPLICATION NO.326 OF 2018

Doulatram Ratilal Rana	]	Petitioner
Vs.		
Vinitaben wd/o Kakubhai Ganatra	]	
(since deceased)	]	
Rajesh S/o Kakubhai Ganatra & Anr.	]	Respondents

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Mr. Manoj Kumar Upadhyay, for Applicant.
 Ms. Harshal Manek i/b Ms. Raksha Thakkar, for Respondents No.2 and 3.

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CORAM : R.G. KETKAR, J.

DATE : 31ST JULY, 2018.

P.C.

Heard Mr. Upadhyay, learned Counsel for the applicant and Ms. Manek, learned Counsel for respondents No.2 and 3 at length.

2. By this Application under section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C'), the applicant, hereinafter referred to as 'defendant' has challenged the judgment and decree dated 7th April, 2016 passed by the learned Judge, Court Room No.34 of the Court of Small Causes at Mumbai (Bandra Branch) in R.A.E. Suit No.599/1102 of 2010 as also the judgment and decree dated 13th March, 2018 passed by the Appellate Court of the Small Causes Court in (A-1) Appeal No.25 of 2016. By these orders, the Courts below decreed the suit instituted by the respondents, hereinafter referred to as "plaintiffs" under section 16 (1) (g) of the Maharashtra Rent Control Act, 1999 (for short 'Act') and directed the defendant to hand over

vacant and peaceful possession of Flat No.4 situate on the first floor of 'Gulab Mansion', Maharashtra Nagar, Lokmanya Tilak Road, Borivali (West), Mumbai 400 092 (for short 'suit premises') to the plaintiffs within three months from the date of passing of the order.

3. In support of this application, Mr. Upadhyay strenuously contended that need pleaded by the plaintiffs is neither reasonable nor bona fide. They are having sufficient premises. That will meet their requirement. The plaintiffs are a well to do family. They are having two garages as also shops elsewhere. Monthly income of the plaintiffs is on a very much higher side as compared to the defendant's income. During the course of hearing, he submitted that there are only two members in the family of the plaintiffs and the plaintiffs are in possession of area admeasuring 1500 square feet on the ground floor. He, however, conceded that no such argument was advanced either before the trial Court or before the Appellate Court and that he can't substantiate this submission in this Court. He invited my attention to paragraph 5 of the Appellate Court judgment. In paragraph 5, the Appellate Court dealt with the written statement filed by the defendant. In the written statement, the defendant contended that entire ground floor of the suit building comprises of four flats approximately admeasuring 1500 square feet carpet area and flat No.6 situate on the first floor of the suit building is in occupation of the plaintiffs. He submitted that though sanctioned plan of the ground floor depicts four flats, they were converted into two flats. He submitted that plaintiff No.2 Rajesh and his wife are residing on the ground floor. There are seven members in the family of plaintiff No.2 and having regard to area in their possession namely ground floor admeasuring 1500 square feet and flat No.6 on the first floor and also obtaining possession of flat No.5 on the first floor, need of the plaintiffs is neither reasonable nor bona fide. He submitted that in fact, he had given suggestion that as the defendant is

in possession of 310 square feet on the first floor comprising of one bed room, hall and kitchen, he is ready and willing to surrender bedroom to the plaintiffs. Bedroom is adjacent to the premises in occupation of the plaintiffs so that it will not be necessary to pass eviction decree. He submitted that having regard to the financial condition of the defendant, he is not in a position to look for alternate premises. He, therefore, submitted that the application requires consideration.

4. On the other hand, Ms. Manek supported the impugned orders. She has taken me through the orders passed by the learned Judge as also by the Appellate Court. She submitted that after considering number of members in the family of the plaintiffs and after considering the evidence on record, the Courts below have concurrently held that the need pleaded by the plaintiffs is both reasonable as also bona fide and that greater hardship will be caused to them in the event of refusal to pass eviction decree. She, therefore, submitted that no case is made out for interfering with the impugned orders.

5. 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 16 (1) (g) of the Act. The learned Trial Judge also held that greater hardship will be caused to the plaintiffs if decree of eviction is refused. The learned trial Judge has considered the ground under section 16 (1) (g) of the Act from paragraphs 19 to paragraph 44. In paragraph 24, the learned trial Judge considered admission of the defendant during the course of cross-examination that married daughters of plaintiff No.1 Vanitaben often visit the plaintiffs and he has seen them. The defendant also did not dispute that plaintiff No.1 has four married daughters and plaintiff No.2 has two married daughters. Ms. Manek submitted that third daughter is also married. The learned trial Judge, therefore, observed that

contentions of the plaintiffs about visit of married daughters are not disputed by the defendant.

6. In paragraph 25, the learned trial Judge has referred to contention of the defendant that the plaintiffs are in occupation of the entire ground floor admeasuring about 1500 to 1600 square feet. The learned trial Judge also noted that the plaintiffs are in possession of Flat No.6 which is having equivalent area as that of the suit premises. In paragraph 26, the learned trial Judge referred to the cross-examination of P.W.1 taken by the defendant for bringing on record description of the premises in possession of the plaintiffs. The learned trial Judge observed that the premises in possession of the plaintiffs on the ground floor consists of one Mandir (worship place), a kitchen, a dining hall attached with the kitchen, two bedrooms, living room and one another room partitioned from dining hall. Mr. Upadhyay submitted that on the ground floor there are three bed rooms. Ms. Manek submitted that there are two bedrooms. The learned trial Judge, however, observed that it is also brought on record that the suit building is having first and second floor consisting of four flats each. On the first floor, one flat is occupied by plaintiff No.3 and his family and three flats are occupied by the tenants.

7. In paragraph 32, the learned trial Judge observed that the plaintiffs came with a specific case that sons of plaintiff No.3 are of marriageable age and they want to accommodate at least one son in the suit premises after marriage. The learned trial Judge noted that during pendency of the suit one of the sons of plaintiff No.3 got married and he has one child. Ms. Manek submits that during pendency of this Civil Revision Application, second son of plaintiff No.3 Karan got married.

8. In paragraph 33, the learned trial Judge noted that plaintiff No.3

came with the case that his family consists of wife and two sons and they are occupying the first floor premises. They have converted the kitchen into bedroom and sharing kitchen on the ground floor along with family of plaintiff No.2, Rajesh.

9. In paragraph 37, suggestion of the defendant that plaintiff No.2 who is presently residing on the ground floor can shift to the first floor premises and plaintiff No.3 and his family members can shift to the ground floor premises was also noted. The learned trial Judge observed that because of the ailment of plaintiff No.2 viz; a cancer patient, he cannot climb the staircase of the premises on the first floor. Ms. Manek submitted that there is no lift in the suit building. In paragraph 40, the learned trial Judge held that if the first floor premises is not convenient to plaintiff No.2, he cannot be compelled to do so. In paragraph 44, the learned trial Judge held that the plaintiffs have established their requirement. In paragraph 57, the learned trial Judge noted the plaintiffs' proposal. The plaintiffs showed willingness to invest Rs. 8,00,000/- in a fixed deposit in the joint names of plaintiff No.2 and the defendant so that the accrued interest can be utilized by the defendant to pay the compensation upon his vacating the suit premises. The defendant did not accept that suggestion.

10. In so far as question of comparative hardship is concerned, the learned trial judge has considered this aspect from paragraph 45 onwards and ultimately concluded that no efforts were made by the defendant for searching alternate accommodation. In paragraph 61, the learned trial Judge has considered financial condition of the plaintiffs and the fact that the defendant's wife is suffering from cancer. It has come on record that unfortunately wife of the defendant also expired pending the proceeding.

11. In so far as the Appellate Court is concerned, the Appellate Court has considered bona fide requirement and the comparative hardship from paragraphs 10 to 23. In paragraph 11, the Appellate Court dealt with members of the family of the plaintiffs. In paragraph 12, the Appellate Court dealt with case of the plaintiffs that the premises available to their family are insufficient to accommodate all family members. In paragraph 13, the Appellate Court noted that one of the sons of plaintiff No.3 got married on 14th June, 2012 and he has one child. Thus, there is increase in the family of the plaintiffs. The defendant also admitted that daughters of plaintiffs are often visiting to the plaintiffs' house. In paragraph 14, the Appellate Court noted that the defendant did not dispute that plaintiff No.3 is using kitchen situate on the ground floor of the suit building. The Appellate Court observed that accommodation available to them is inconvenient and sons of plaintiff No.3 along with their families cannot be accommodated on the ground floor of the suit building for want of bedrooms, kitchen. Out of two bedrooms situate on the ground floor, one is occupied by plaintiff No.2 and his wife and another is by their daughter.

12. From paragraphs 17 onwards, the Appellate Court considered the question of comparative hardship. In paragraph 20, the Appellate Court noted the proposal given by the plaintiffs so as to enable the defendant to shift in the alternate premises on leave and licence basis. The defendant, however, did not accept that proposal on the ground that area is not good. The Appellate Court noted that the defendant did not visit that area. The Appellate Court also noted that the plaintiffs were ready to bear monthly compensation by depositing Rs. 8,00,000/- in the joint name of plaintiffs and defendant. They proposed to pay compensation out of that interest. However, the defendant did not agree to it.

13. In paragraph 21, the Appellate Court considered subsequent events namely plaintiffs obtaining possession of Flat No.5 situate on the first

floor. In paragraph 22, the Appellate Court noted that during pendency of the appeal, wife of the defendant also expired. Thus, after appreciating the evidence on record, the Appellate Court also upheld ground of eviction under section 16 (1) (g). The Appellate Court also held that greater hardship will be caused to the plaintiffs if eviction decree is refused.

14. In view of the aforesaid discussion, I do not find that the Courts below committed any error in decreeing the suit. That apart, even during pendency of the present C.R.A, the plaintiffs had given four proposals to the defendant. The plaintiffs suggested that they are willing to pay lumpsum amount of Rs. 3,00,000/- so as to enable the defendant to vacate the premises and shift from the suit premises. Second suggestion was that the plaintiffs have offered one premises on leave and licence basis and the licence fee was Rs. 7,000/- per month. The plaintiffs expressed their willingness to bear Rs. 4500/- per month for a period of five years. The defendant was to take inspection of the said premises. The defendant did not show favourable response. The plaintiffs also suggested that they are ready and willing to give six months time for vacating the suit premises. It, however, transpired that the defendant is not ready and willing to accept any of these suggestions/proposals given by the plaintiffs.

15. In the light of the aforesaid discussion, I do not find that the Courts below committed any error in decreeing the suit. It cannot be said that the findings recorded by the Courts below while decreeing the suit under Section 16 (1) (g) of the Act are contrary to the material on record. The defendant is 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 reached the conclusion arrived at by the Courts below. 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.

16. Ms. Manek submits that in pursuance of the order dated 22nd June, 2018, the defendant has deposited an amount of Rs.7200/- in this Court and she may be permitted to withdraw that amount. Mr. Upadhyay submits that the suit is not for recovery of rent. As the amount is towards arrears of rent, the plaintiffs are permitted to withdraw that amount unconditionally.

17. At this stage, Mr. Upadhyay orally prays for stay of the eviction decree for a period of eight weeks from today. He states that the defendant and all the adult family members residing with him/using the suit premises will file usual undertaking in this Court within two 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 interest nor parted with possession of the suit premises;
- [c] they will hereafter neither create third party interest nor part with possession of the suit premises;
- [d] within two weeks from today, the defendant will deposit the entire arrears in this Court, under intimation in writing to the learned Counsel for the plaintiffs.
- [e] in case they are unable to obtain suitable orders from the higher Court within eight weeks from today, they will hand over vacant and peaceful possession of the suit premises to the plaintiffs;

18. In view thereof, notwithstanding dismissal of the Civil Revision Application, subject to the defendant filing undertaking in the aforesaid terms within two weeks from today, this order shall remain stayed for the period of eight weeks from today. It is expressly made clear that in case the undertaking is not filed in the aforesaid terms within two weeks from today and/or in case the defendant commits breach of any of the conditions of the undertaking, the plaintiffs will be at liberty to execute decree. Order accordingly.

19. List the C.R.A for reporting compliance on 21st August, 2018.

[R.G. KETKAR, J.]