

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 212 OF 2015

Abdul Rahim Haji Abdul Gafoor
(since Deceased through his Legal Heirs)
Maimuna Abdul Rahim
and others.

...Applicants

Versus

Anjuman-e-Hidayat-e-Islam
And Ors

...Respondents

....

Mr. Suhas Oak i/b. Pranil Sonawane, Advocate for the Applicants.
Mr. Mahendra N. Sandhyanshiv, Advocate for Respondents No.1, 2 & 4.

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CORAM : R. G. KETKAR, J.

DATE : 03rd APRIL, 2018

P.C.

1. Heard Mr.Suhas Oak, learned Counsel for the applicants and Mr. Mahendra Sandhyanshiv, learned Counsel for respondents No.1, 2 & 4, at length.

2. By this application under Section 115 of Code of Civil Procedure, 1908, the applicants, hereinafter referred to as 'defendant No.1' have challenged the judgment and decree dated 28.9.2000 passed by the learned Jt. Civil Judge, Junior Division, Malegaon in R.C.S. No.34/1980 as also the judgment and decree dated 3.2.2015 passed by the learned District Judge-1, Malegaon in Civil Appeal No.162/2000.

By order dated 28.9.2000, the learned trial Judge decreed the suit only under Section 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, 'Act') and declined to pass decree under Section 13(1)(e) and 13(1)(g) of the Act. Aggrieved by that decision, original defendant No.1 preferred appeal. The plaintiffs filed cross-objection Exhibit-13 insofar as rejecting the grounds under Section 13(1)(e) and 13(1)(g) of the Act and change of user i.e. 13(1)(k) of the Act. The Appellate Court dismissed the appeal of defendant No.1 and decreed the suit under Sections 12, 13(1)(e) and 13(1)(g) of the Act. It is against these orders, the L.Rs. of defendant No.1 have preferred this application.

3. In support of this application, Mr. Oak strenuously contended that what was let out to defendant No.1 was open land in C.T.S. No. 704, 705 and 707/B situate at Nayapurward, Municipal Council Malegaon. In other words, he contended that open land together with construction portion was not let out to defendant No.1. He also invited my attention to the agreement of tenancy dated 20.12.1958 at Exhibit-81 to contend that as far as CTS No.707B is concerned, what was let out to defendant No.1 was only open plot and not constructed portion. He submitted that CTS No.707B consisted of open space and one shed constructed by the plaintiff at their expenses and other shed which was

erected by defendant No.1. He has invited my attention to the issues framed by the learned trial Judge and in particulate issue No.9. The issue No.9 and answer recorded against that issue is to the following effect :

9.	Does the defendant No.1 prove that the open land was leased out to his father and that, it was so agreed at the time of letting the property in the year 1936 to the defendant No.1 and should construct thereon and use it as per the wishes and sub-let it ?	In the affirmative.
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4. Aforesaid issue was discussed in paragraphs-23 and 24 by the trial Court. In paragraph-23, the learned trial Judge discussed the evidence of PW-1 (plaintiff No.5) and observed that in the cross-examination suggestion was put to him by the learned Counsel for defendant No.1 and he replied it in the negative by saying that father of defendant No.1 has carried out construction in an open space which was given to him on rent and on further asking him the reason for saying that, he stated that the premises is still in the same condition as it was given to the father of defendant No.1 and it is now still in existence in that nature. Further he is not aware of the transaction that took place in the year 1936 by plaintiff No.1 as he was minor at that time. He is not aware as to the suit premises given to the father of defendant No.1

consisted some portion as open and some as constructed one.

5. Mr. Oak submitted that the learned trial Judge held that defendant No.1 proved that the open land was let out to his father and that, it was so agreed at the time of letting the property in the year 1936 to the defendant No.1 that defendant No.1 should construct thereon and use it as per the wishes and sub-let. Said finding was not disturbed by the appellate Court. In fact the plaintiff did not file cross-objection against this finding though in the cross-objection the plaintiff challenged the trial Court's order declining to pass decree under Section 13(1)(e) and 13(1)(g) of the Act. Thus the finding against issue No.9 attained finality and cannot be set aside in the present application.

6. He further submitted that as the suit premises was open land, the Courts below were not justified in passing the decree under Section 12 of the Act. He relied upon the decision of this Court in **Balu Mahadeo Randhir vs. Nabilal Haji Habib Gadiwale and others**, (1997) 1 MH.L.J. 302 and in particular paragraph-18.

7. He further submitted that insofar as the findings of the Court below under Section 12 are concerned, said findings are contrary to the material on record. He has taken me through the paragraphs-31 to 38 of the trial Court's judgment as also paragraphs-11 to 13 of the District

Court judgment. He submitted that in paragraph-13, the learned District Judge has wrongly recorded that defendant No.1 was not regularly depositing rent so as to claim benefit of Section 12(3)(b) of the Act.

8. Insofar as the ground of unlawful sub-letting is concerned, he has invited my attention to paragraphs-14 and 15 of the Appellate Court judgment where the Appellate Court observed that defendant No.1 did not bring any evidence on record to show that the plaintiff permitted to sub-let the premises to defendant No.3. The District Court was, therefore, not justified in decreeing the suit under Section 13(1)(e) of the Act.

9. As far as decree under Section 13(1)(g) passed by the District Court is concerned, he has taken me through paragraph-16 where the District Court considered the need pleaded by the plaintiffs that the plaintiffs need the suit premises for running a school. He submitted that as basically what was let out to defendant No.1 was open land and not land with construction, the Courts below were not justified in passing the eviction decree.

10. On the other hand, Mr. Sandhyanshiv supported the impugned orders. He has taken me through the description of the suit premises, in particular paragraphs-1 and 2 of the plaint as also written

statement filed by defendant No.1 and in particular paragraphs-2 and 9 thereof. He also invited my attention to the findings recorded by the learned trial Judge against issue No.2 and the finding recorded against issue No.2, which is to the following effect :

2.	Do the plaintiffs prove that the suit property described in para 1 of the plaint, was given in possession of the defendant no.1 as monthly tenant on monthly rent of Rs. 40/- ?	Yes. The defendant No.1 was put in possession as monthly tenant, but, on monthly rent of Rs. 20/-
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11. He submitted that what was let out to defendant No.1 was open space coupled with constructed portion. In the open space, father of the defendant No.1 has carried out further construction. He has also invited my attention to paragraph-24 of the trial Court's judgment where the learned trial Judge discussed the evidence of defendant No.1 which shows that his father had taken the premises partly constructed and partly open on rent for running a factory and residence also. He, therefore, submitted that the contention of defendant No.1 that only open plot was let out to defendant No.1 is not substantiated by defendant No.1 on the basis of pleadings as also adducing evidence. He, therefore, submitted that no case is made out for interfering with the impugned order.

12. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Defendant No.1 claims that what was let out to him was only open space and not open space and constructed portion. As against this, it is the case of the plaintiffs that what was let out to defendant No.1 was open land together with constructed portion thereon.

13. With the assistance of learned Counsel for the parties, I have perused the description of the premises given in paragraphs-1 and 2 of the plaint as also the written statement filed by defendant No.1. In paragraph-2, defendant No.1 contended that the description of the suit premises given in paragraph-1a, 1b and 1c is incorrect. Defendant No.1 further did not specifically contend that what was let out to him was open space and not constructed portion.

14. A perusal of paragraph-9 of the written statement also shows that defendant No.1 contended that the premises let out to defendant No.1 was partly open space and partly constructed portion. A perusal of the trial Court's judgment and in particular paragraph-2 shows that the learned trial Judge has described the suit premises as mentioned by the plaintiff in paragraphs-2 and 3 of the plaint. In other words, what was

let out to defendant No.1 was open space and construction. It is in that context one has to appreciate the findings of learned trial Judge against issues No.2 and 9. While answering issue No.2, the learned trial Judge observed that the plaintiffs proved that the suit property described was given in possession of defendant as monthly tenant of Rs.20/- as against Rs.40/- as claimed by the plaintiffs. Thus the learned trial Judge observed that the property described in paragraph-1 of the plaint was given in possession of defendant No.1 as a monthly tenant.

15. The premises described in paragraph-1 consist of partly open space and partly constructed portion. Mr. Oak heavily relied upon the agreement dated 20.12.1958 at Exhibit-81 to contend that what was let out to defendant No.1 was open space with one shed constructed by the plaintiffs at their expenses and one shed which was constructed by defendant No.1. A perusal of that rent receipt shows that open space together with shed constructed by the plaintiffs in C.T.S. No.707B at the expenses was let out to defendant No.1. It is material to note that the finding recorded by the learned trial Judge in paragraph-24. In paragraph-24, the learned trial Judge dealt with the evidence adduced by defendant No.1 and observed that this evidence shows that defendant No.1's father had taken the suit premises consisting partly constructed and partly open land on rent basis. It is in that context the finding

recorded by the learned trial Judge against issue No.9 has to be appreciated. It cannot be accepted that the learned trial Judge recorded finding against issue No.9 to the effect that only open space was let out to defendant No.1 by the plaintiffs. Understood thus, I do not find any merit in the submission of Mr. Oak that what was let out to defendant No.1 was only open space and not the constructed portion. In view thereof, the reliance placed by Mr. Oak on the decision of this Court in **Balu Mahadeo Randhir** (supra), does not advance the case of defendant No.1. In that case, what was let out to the defendant/tenant was open space on rent and they have constructed their own shed on the same. It is in that context in paragraph-18, it was observed thus :

“18. Once it is held that the present defendant-tenant was tenant of the plot of land and not of the room, the very notice under section 12(2) demanding rent in respect of the room which did not belong to the plaintiffs but belongs to the tenant becomes unlawful. The Apex Court in *Chimanlal v. Mishrilal*, reported in (1985) 1 S.C.C. 14 has held that the validity of a notice under section 12(1)(a) of the M.P. Accommodation Control Act is a prior condition for the maintainability of the eviction suit. The notice referred to in section 12(1)(a) must be a notice demanding the rental arrears in respect of accommodation actually let to the tenant. It must be a notice (a) demanding the arrears of rent in respect of the accommodation let to the tenant and (b) the arrears of rent must be legally recoverable from the tenant. There can be no admission by a tenant that arrears of rent are due unless they relate to the accommodation let to him. A valid notice demanding

arrears of rent relatable to the accommodation let to the tenant from which he is sought to be evicted is a vital ingredient of the conditions which govern the maintainability of the suit, for unless a valid demand is made no complaint can be laid of non-compliance with it, and consequently no suit for ejectment of the tenant in respect of the accommodation will lie on that ground. On the facts of that case, the Apex Court held that the notice of demand in the said case was invalid as the description of the demised premises in the said notice was not correct.”

16. In the present case it cannot be said that only open space was let out to defendant No.1.

17. This brings me to ground of default under Section 12 of the Act. The Courts below have concurrently recorded finding that the defendant was not entitled to avail benefit under Section 12(3)(b) of the Act as he was not regularly depositing the rent. In paragraphs-12 and 13, the learned District Judge has considered this aspect. The learned District Judge noted that the plaintiffs had issued demand notice on 25.4.1978. Defendant No.1 replied the notice on 3.6.1978 and admitted that he was paying rent @ Rs.40/- per month. On 12.6.1978, defendant No.1 filed Civil Misc. Application No.43/1978 for fixation of standard rent. He, however, did not apply for fixation of the interim rent. Defendant No.1 also did not deposit the arrears of rent in that application till its decision on 23.2.1981. Thus from 12.6.1978 to

23.2.1981, defendant No.1 did not deposit any rent.

18. In paragraph-13, the learned District Judge referred to the rent receipts at Exhibits-71 to 78 dated 5.8.1981, 8.4.1981, 28.7.1982, 13.9.1985, 29.6.1986, 7.7.1987, 21.3.1991 and 27.3.1998 respectively. The learned District Judge observed that defendant No.1 did not lead cogent evidence to show that he complied the provisions of Section 12(3)(b) of the Act. For the reasons recorded in paragraphs-11 to 13, I do not find that the learned District Judge committed any error in passing the decree under Section 12(3)(b) of the Act.

19. Insofar as the ground of unlawful sub-letting is concerned, in paragraph-14, the learned District Judge observed that in the cross-examination though the witness of defendant No.1 denied the ground of unlawful sub-letting, he admitted that he sub-let the premises with the permission of the Trust and defendant No.3 was paying him Rs.100/- per month towards rent. Said fact was also admitted in the written statement of defendant No.3. The learned District Judge, therefore, held that the plaintiffs established that defendant No.1 sublet the premises without obtaining permission of the plaintiffs and thus the plaintiffs are entitled to a decree under Section 13(1)(e) of the Act.

20. In paragraph-15, the learned District Judge observed that the

learned trial Judge committed error in declining to pass decree under Section 13(1)(e) of the Act. For the reasons recorded in paragraphs-14 and 15, I do not find that the learned District Judge committed any error in passing the decree under Section 13(1)(e) of the Act.

21. Insofar as ground under Section 13(1)(g) of the Act is concerned, the plaintiff is a Public Charitable Trust. Section 13(1)(g) of the Act reads thus :

“13. When landlord may recover possession.-- (1)
Notwithstanding anything contained in this Act but subject to the provisions of sections 15 and 15A, a landlord shall be entitled to recover possession of any premises if the Court is satisfied-

(g) 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 held⁸[or where the landlord is a trustee of public charitable trust that the premises are required for occupation for the purposes of the trust;”

22. In paragraph-16, the learned District Judge observed that since the plaintiff is a Public Charitable Trust which requires to plead that it needs the suit premises for occupation for the purpose of the Trust. The Trust is not required to establish reasonable and bonafide requirement. The learned District Judge accordingly held that the plaintiffs have established the ground under Section 13(1)(g) of the Act.

23. The Courts below have decreed the suit under Section 12 of the Act. Though the trial Court declined to pass decree under Sections 13(1)(e) and 13(1)(g) of the Act. The learned District Judge decreed the suit also on these two grounds. After considering the material on record, I do not find that the Courts below committed any error in decreeing the suit. Mr. Oak submitted that as far as CTS No.707B is concerned what was let out to defendant No.1 was only open space and the shed does not constitute 'premises' within the meaning of Section 5(8) of the Act. This submission is stated to be rejected.

24. Defendant No.1 was 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. Defendant No.1 was also not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the Courts below. Hence, no case is made out for invocation of powers under Section 115 of C.P.C. Hence, C.R.A. fails and the same is dismissed with no order as to costs.

25. That apart, a perusal of the office remark also shows that defendant No.1 has deposited arrears of Rs.55,000/- from August, 2015 to May, 2017 in this Court. In other words, post May, 2017 defendant

No.1 has not deposited the arrears of rent even in this Court. Even there is non-compliance of Section 12(3)(b) in this Court. The plaintiffs are permitted to withdraw the amount deposited by defendant No.1 in this Court unconditionally.

26. At this stage, Mr. Oak orally applies for stay of eviction decree for a period of twelve weeks from today. Mr. Oak states that the applicants are in possession and they have neither created third party interest nor parted with the possession of the suit premises. 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 with them are ready and willing to give usual undertaking within two weeks from today. Learned Counsel for the respondents opposes said prayer.

27. 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 eviction decree for a period of twelve weeks from today subject to the applicants and all adult members residing with them giving usual undertaking to this Court within two weeks from today incorporating therein:that

- (i) they are in actual possession of the suit premises and nobody else is in possession;

- (ii) they have so far neither created third party interest nor parted with the possession of the suit premises;
- (iii) they will hereafter neither create third party interest nor part with the possession of the suit premises;
- (iv) they will pay the arrears of rent, if any, to the respondents within two weeks from today; and
- (v) that in case the applicants are unable to obtain suitable orders within twelve weeks from today from the higher Court, they will deliver vacant and peaceful possession of the suit premises to the respondents.

28. In view thereof, notwithstanding dismissal of Civil Revision Applications, the eviction decree is stayed for a period of twelve weeks from today, subject to the applicants filing undertaking in the aforesaid terms within two 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 paid within two weeks from today, the interim order shall stand vacated without further reference to the Court. Respondents No.1, 2 and 4 are permitted to withdraw the amount along with accrued interest, if any unconditionally. List the application for reporting compliance after two weeks. Order accordingly.

(R. G. KETKAR, J.)