

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL REVISION APPLICATION NO.206 OF 2015

Sharda Jagmohan Khanna and others] Applicants

Vs.

Umesh Ramanlal Bhasin and others] Respondents

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Mr. R.M. Haridas i/b Mr. Jaydeep Thakkar, for Applicant.

Mr. P.S. Dani, Sr. Advocate i/b Halai & Co., for respondents No.1 to 3.

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CORAM : R.G. KETKAR, J.

DATE : 5TH MARCH, 2018.

P.C.

1. Heard Mr. Haridas, learned counsel for the applicants and Mr. Dani, learned senior Counsel for respondents No.1 to 3 at length.

2. By this application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C'), defendants No.1(a), 1(b) and 3 have challenged the judgment and decree dated 31st August,, 2009 passed by the learned Judge, Court Room No.6 of the Small Causes Court, Mumbai in R.A.E. Suit No.181/374 of 1995 as also the judgment and decree dated 7th March, 2015 in Appeal No.20 of 2010. By these orders, the Courts below decreed the suit instituted by respondents No.1 to 3 (hereinafter referred to as "Plaintiffs") u/s 13 (1) (g) and 13 (1) (l) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short "Act").

3. In support of this application, Mr. Haridas strenuously contended that the Courts below committed serious error in decreeing suit in absence of all the co-owners. In fact, the plaintiffs had impleaded Satyawati Ramdas Bhasin, sister-in-law of the original plaintiff Kantadevi as defendant No.3. He submitted that on her behalf her son and Constituted Attorney Surendrakumar Ramdas Bhasin made Affidavit in Interim Notice No.1214 of 1995. In particular in paragraph 3, he stated that the plaintiffs have made false allegations with a view to obtaining orders from the Court. The plaintiffs have instituted the suit not for bona fide need but for harassing him. In paragraph 6, he stated that the plaintiffs have sufficient accommodation in the suit building and so-called need is made out for the purpose of filing a false suit. He also denied that any hardship will be caused to the plaintiffs. This was reiterated in paragraph 10 of the said Affidavit. In paragraph 11, he stated that the original plaintiff and her sons want to deprive right of defendant No.3 and her sons in the suit building as well as other properties jointly owned by them.

4. Mr. Haridas submitted that subsequently defendant No.3 was deleted from the proceedings and Surendrakumar Ramdas Bhasin deposed on behalf of the plaintiffs to substantiate ground u/s 13 (1) (g) of the Act. He submitted that this is wholly impermissible. He invited my attention to grounds 6 to 8 in the appeal memo to contend that though this contention was specifically agitated before the learned trial Judge it was not dealt with. Even, the Appellate Court had not dealt with this aspect. In short, he submitted that the suit was bad for non joinder of all the co-owners. That apart, defendant No.3 one of the co-owners had specifically opposed the ground raised u/s 13 (1)(g) of the Act. The Courts below were, therefore, not justified in decreeing the suit on that ground.

5. In support of this proposition, he relied upon the decision of the

Apex Court in the case of **India Umbrella Manufacturing Co. and others Vs. Bhagabandei Agarwalla (dead) by LRS Savitri Agarwalla (Smt) and others, (2004) 3 Supreme Court Cases 178** and in particular, paragraph 6.

6. Mr. Haridas further submitted that it has come on record that the plaintiffs have one building at Matunga. The plaintiffs, however, did not disclose the said fact. The plaintiffs suppressed that fact which is relevant for considering ground under Section 13 (1) (g). He relied on decision of this Court in the case of **Abdul Samad Makhdum Shaikh Vs. Sudha Akant Parkhe, 1983 Bom. R.C.9** and in particular paragraph 14 to contend that the plaintiff must place before the Court all the necessary details which are required for granting relief. A mere *ipse dixit* of the landlord that he requires the accommodation for his personal occupation is not enough. Unless the landlord gives such details, the tenant cannot be expected to meet the case of the landlord.

7. Mr. Haridas also relied on the decision of this Court in the case of **Tarachand Hassaram Shandasani Vs. Durgashankar G. Shroff & others, 2004 (Supp.) Bom. C.R. 333** and in particular paragraph 8 thereof to contend that it is obligatory for the landlord to disclose in the pleadings and in his evidence the fact that he owns other premises. As in the present case, the plaintiffs have suppressed that they own building at Matunga, the lower Courts were not justified in decreeing the suit u/s 13 (1) (g) of the Act.

8. As far as the ground u/s 13 (1)(l) viz: acquisition of suitable alternate residence is concerned, he invited my attention to the discussion of the Appellate Court from paragraphs 35 onwards as also evidence of examination-in-chief of defendant No.1 Mr. Jagmohand Khanna and particular paragraph 6. In paragraph 6, defendant No.1 deposed that after 1995 his son

Yatin had taken premises on ownership basis in Jahmat Lodge as it was not comfortable and advisable to stay together with family members due to indifferent attitude between his wife and daughter-in-law, the son Yatin had to shift to another premises out of compulsion. Relying on this paragraph, Mr. Haridas strenuously contended that Courts below have not justified in passing the decree u/s 13(1)(l) of the Act. Hence, application requires consideration.

9. On the other hand, Mr. Dani supported the impugned orders. He submitted that after appreciating the evidence on record, the Courts below have concurrently decreed the suit under both the grounds viz: Section 13 (1) (g) and 13 (1) (l) of the Act. He has taken me through the cross-examination of D.W.1 Jagmohan to contend that son and wife of defendant No.1 have acquired premises jointly at Jahmat Lodge. D.W. 1 admitted that flat is duplex and it is approximately 2500 square feet. On the fourth floor, there are three rooms and on the 5th floor, there is one bedroom. It is having attached bath room and on the 4th floor, there are two bathrooms. Area of the terrace is 900 to 1000 square feet. As far as other flat viz: Khush Villa, the same is acquired by defendant No.2. Area of the said premises is between 2000 and 2500 square feet and terrace is of 900 square feet. He submitted that the Courts below were fully justified in decreeing the suit.

10. I have considered rival submissions of the learned Counsel for the parties. I have also perused the material on record. As noted earlier, the Courts below have decreed the suit u/s 13 (1)(g) as also 13 (1) (l) of the Act. It is no doubt true that Satyawati Ramdas Bhasin was impleaded as defendant No.3. On her behalf her son and Constituted Attorney Surendrakumar Ramdas Bhasin made Affidavit of April, 1995 in Interim Notice No.1214 of 1995 where he stated that original plaintiff has sufficient accommodation in the suit building and the so-called need is made for the purpose of filing false suit. He

further stated that original plaintiff is depriving him from enjoyment of his share from various properties jointly owned by the plaintiff and defendant No.3. He also stated that no hardship would be caused to the plaintiff as she is having sufficient place to reside.

11. It is further material to note that during pendency of the suit, defendant No.3 was deleted. Not only that, Surendrakumar Ramdas Bhasin was examined as a witness on behalf of the plaintiffs to substantiate the ground u/s 13 (1) (g) of the Act. A perusal of the cross-examination of the said witness also does not indicate that he was confronted with his Affidavit made in Interim Notice No. 2014 of 1995. That apart, from his conduct, it is evident that he no longer had any objection for the plaintiffs instituting the suit for recovery of possession u/s 13 (1) (g) of the Act.

12. Mr. Haridas relied on the decision of **M/s. India Umbrella Manufacturing Co. and others**, (supra) and in particular paragraph 6. In paragraph 6, it was observed thus;

“Having heard the learned counsel for the parties we are satisfied that the appeals are liable to be dismissed. It is well settled that one of the co-owners can file a suit for eviction of a tenant in the property generally owned by the co-owners. (See: Sri Ram Pasricha Vs. Jagannath and Dhannalal Vs. Kalawatibai SCC para 25). This principle is based on the doctrine of agency. One co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other co-owners. The consent of other co-owners is assumed as taken unless it is shown that the other co-owners were not agreeable to eject the tenant and the suit was filed in spite of their disagreement. In the present case, the suit was filed by both the co-owners. One of the co-owners cannot withdraw his consent midway the suit so as to prejudice the other co-owner. The suit once filed, the rights of the parties stand crystallised on the date of the suit and the entitlement of the co-owners to seek ejectment must be adjudged by reference to the date of

institution of the suit; the only exception being when by virtue of a subsequent event the entitlement of the body of co-owners to eject the tenant comes to an end by act of parties or by operation of law”.

Above decision was considered in **Mohinder Jain Vs. Manohar Lal Jain (2006) 2 SCC 724**. In paragraph 11, it was observed that in the event a co-owner objects initiating eviction proceedings, same may be relevant fact.

13. In the present case, fact that the Surendrakumar Ramdas Bhasin deposed on behalf of the plaintiffs indicates that he had consented for one of the co-owners instituting the suit. Apart from that, the defendants also did not challenge the order deleting defendant No.3 from the proceedings. In view thereof, no fault can be found in the findings recorded by the Courts below on this aspect. A perusal of the trial Court's order does not indicate that the said contention was specifically agitated before the trial Court. That apart even perusal of appellate Court's order does not indicate that the said ground was specifically urged before the Appellate Court. It is, therefore, not possible to accept the submission of Mr. Haridas that the suit was bad for non joinder of other co-owners and that one of the co-owners had specifically objected to filing of the suit by the plaintiffs. In fact, paragraph 6 of **India Unmbrella Manufacturing Co. and others** (supra), shows that the Apex Court observed that;

“It is well settled that one of the co-owners can file a suit for eviction of a tenant in the property generally owned by the co-owners”.

14. The learned Trial Judge has considered the ground of bona fide requirement from paragraph 92 to paragraph 98 and hardship in paragraphs 98 to 103 and came to the conclusion that the plaintiffs have established bona

fide requirement and that greater hardship will be caused to them in the event of refusal of passing the eviction decree. A perusal of the Appellant Court judgment shows that the Appellate Court has considered this aspect from paragraphs 40 to 51 and the issue of hardship from paragraphs 52 to 54 and concurred with findings recorded by the learned trial Judge. The findings recorded by the Courts below on the ground of bona fide requirement u/s 13(1)(g) are based upon the evidence on record and cannot be said to be perverse.

15. Mr. Haridas relied on a decisions of this Court in the cases of **Abdul Samad** and **Tarachand Hassaram Shandasani** (supra) to contend that the plaintiffs have suppressed availability of the building at Matunga. It is not possible to accept this submission. D.W. 1 admitted in the cross-examination that building at Matunga is a tenanted building. In other words, the premises in Matunga building are not available. In case of **Tarachand Hassaram Shandasani** (supra), the learned Single Judge of this Court has referred to availability of various other premises in paragraph 6 and thereafter observed in paragraph 8 thus;

“To my mind, however, it is obligatory for the landlord to disclose in the pleadings and in his evidence the fact that he owns other premises which were capable of being utilized for the requirement pressed into service in the suit filed against the tenant and to further disclose and explain that inspite of those acquisition and ownership of other premises, the requirement which is pressed into service against the tenant would still survive. It is only then the landlord would be entitled to invoke this ground and would succeed in establishing his need to be *bona fide* and reasonable”.

16. A perusal of above extracted portion shows that the plaintiff/landlord had acquired some premises pending the suit as also had other premises on ownership basis. The facts obtained in the present case are materially different from the case in that case. Reliance placed on these

decisions, therefore, does not advance the case of the defendant.

17. As far as the ground of acquisition of suitable alternate residence is concerned, a perusal of the cross-examination of D.W. 1 shows that premises at Jahmat Lodge are acquired in the joint name of his son Yatin and his wife. Other premises at Khush Villa is acquired by defendant No.2. During the pendency of the proceedings, defendant No.1 also unfortunately expired. His mother also expired. As far as acquisition of suitable residence is concerned, the trial Court has considered this aspect from paragraphs 25 to 31. The Appellate Court has considered this aspect from paragraphs 28 to 39. Having regard to the acquisition of premises in the name of defendants No.1's wife and son as also by defendant No.2, no fault can be found with the orders passed by the Courts below. A perusal of the findings recorded by the Courts below shows that they are based upon evidence on record. It cannot be said that the findings recorded by the Courts below are perverse being based upon no evidence and contrary to the evidence. Hence, no case is made out for invoking powers for interfering with concurrent finding of facts based upon appreciation of evidence. Hence, the Civil Revision Application fails as such, is dismissed.

18. At this stage, Mr. Haridas orally applied for stay of this order for a period of 10 weeks from today. He assures that defendants will not seek further extension of time and interim relief. He states that the defendants and all the adult family members residing with them 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 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 two weeks from today, petitioners will deposit the entire arrears in the Small Causes Court, Mumbai in the account of R.A.E. & R. Suit No.181/374 of 1995 , under due intimation to the respondents.
- (e) in case they are unable to obtain suitable orders from the higher Court within ten weeks from today, they will hand over vacant and peaceful possession of the suit premises to the plaintiffs.

19. Subject to the petitioners' filing the undertaking in the aforesaid terms within two weeks from today, this order shall remain stayed for the period of ten 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 defendants 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.]