

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

CIVIL REVISION APPLICATION NO.342 OF 2018

Mohan K. Ghadshi	]	Petitioner
Vs.		
Nishit Narendra Bapna & Ors.	]	Respondents

.....
Mr. Manohar A. Dudhane, for Petitioner.

.....
CORAM : R.G. KETKAR, J.

DATE : 1ST AUGUST, 2018.

P.C:

Heard Mr. Dudhane, learned Counsel for the applicant 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 No.3” has challenged the judgment and decree dated 20th December, 2011 passed by the learned Judge, Court Room No.10 of the Court of Small Causes at Mumbai in R.A.E & R Suit No.148/237 of 2004 as also the judgment and decree dated 26th February, 2018 passed by the Appellate Bench of the Court of Small Causes at Mumbai in (A-1) Appeal No.13 of 2012. By these orders, the Courts below decreed the suit instituted by respondent No.1, hereinafter referred to as “plaintiff” under sections 15, 16 (1) (b), 16 (1) (e) and 16 (1) (a) of the Maharashtra Rent Control Act, 1999 (for short 'Act') r/w section 108 (o) of Transfer of Property Act, 1882 (for short 'T.P. Act’).

3. In support of this application, Mr. Dudhane strenuously contended that the Courts below were not justified in decreeing the suit as the plaintiff did not substantiate the case by leading the evidence. He submitted that the

plaintiff did not enter into the witness box and instead examined his father P.W.1, Narendra Bapna, on the basis of Power of Attorney. He submitted that P.W.1, Narendra Bapna has no personal knowledge about facts of the suit. His evidence deserves to be discarded. If his evidence is discarded then the plaintiff must fail and the suit is required to be dismissed.

4. In support of his submission, he relied on the decision of the Apex Court in the case of **Janki Vashdeo Bhojwani and another Vs. Indusind Bank Ltd., 2005 (2) Supreme Court Cases 217**. On merits, he further submitted that defendant No.3 is entitled to benefit of section 7 (15) (d) of the Act as he was residing in the suit premises at the time of death of tenant, Janardan Ravnang. He, therefore, submitted that application requires consideration.

5. I have considered the submissions advanced by Mr. Dudhane. I have also perused the material on record. As noted earlier, the Courts below have decreed the suit under sections 15, 16 (1) (b), 16 (1) (e) and 16 (1) (a) of the Act r/w section 108 (o) of the T.P. Act. In so far as submission of Mr. Dudhane that P.W. 1 Narendra Bapna has no personal knowledge about facts of the suit and, therefore, his evidence deserves to be discarded is concerned, I do not find any merit whatsoever in this submission. A perusal of paragraph 1 of examination-in-chief of P.W.1 Narendra Bapna shows that P.W.1 deposed that he is Constituted Attorney of the plaintiff who is also his son. He is managing the property and he is fully aware of the facts of the case. In paragraph 3, P.W.1 stated that demand notice dated 3rd April, 2003 was issued as per the instructions given by him and the plaintiff and the statements made therein are true and correct. A perusal of the cross-examination does not indicate that the defendants have confronted the witness with those statements. In fact, in the cross-examination, P.W.1 reiterated that he is

managing affairs of Midway Apartment Tenants building and that the plaintiff is owner of Midway Tenants Apartment. A perusal of cause title of the suit shows that the plaintiff is residing at Midway Apartment, Appasaheb Marathe Marg, 400 025. Evidence of P.W.1 shows that he also resides there. The Courts below have considered this aspect at great length and in particular the Appellate Court has considered this aspect from paragraphs 16 to paragraphs 19. After considering the decision in the case of **Janki Vashdeo Bhojwani** (supra), the Appellate Court concluded that evidence of P.W.1 cannot be thrown away merely on the ground that he is Power of attorney of the plaintiff and his evidence is required to be discarded.

6. In so far as the ground of unlawful subletting and the claim of defendant No.3 that he is member of family of deceased tenant Janardan and at the time of his death, he was residing with him, he is entitled to benefit of section 7 (15) (d) is concerned, the Appellate Court has considered this aspect from paragraphs 20 to paragraphs 32 and held that defendant No.3 has failed to establish that he is family member of deceased tenant Janardan. After considering the admissions given by defendant No.2 that deceased Janardan had let out the suit premises to defendant No.3 by accepting money and the fact of receiving money from defendant No.3 was disclosed to him by his father, the Appellate Court concluded that admission on the part of defendant No.2 clearly shows that defendant No.2 has sublet the suit premises to defendant No.3 by accepting consideration. The Appellate Court, therefore, concluded that the plaintiff has established ground of unlawful subletting under section 16 (1) (e) of the Act and defendant No.3 failed to establish that he was family member of deceased tenant.

7. In so far as aspect of arrears of rent and wilful default is concerned, the Appellate Court has considered this aspect from paragraphs 32

to 36. The Appellate Court noted that demand notice was duly served on defendants No.1 and 2 and despite that they failed to deposit the arrears of rent in the Court after service of suit summons. The said fact was admitted in cross-examination by defendant No.2. As there was categorical admission by defendants No.1 and 2 that they have not paid arrears of rent either prior to suit or after institution of the suit, the Appellate Court concluded that the defendants are wilful defaulters. The Appellate Court also considered compliance of section 15 (3) of the Act and held that the defendants failed to comply with section 15 of the Act.

8. In so far as grounds under sections 16 (1) (b) and 16 (1) (a) r/w section 108 (o) of the T.P. Act is concerned, the Appellate Court has considered these grounds from paragraphs 37 to paragraphs 44. In paragraph 37, the Appellate Court considered evidence of P.W.2 Mr. Ogale, an Architect. He deposed that Corporation had issued notice to the plaintiff under section 381 of the Mumbai Municipal Corporation Act, 1888. P.W.2 Ogale deposed that six major changes have been carried out by the tenant without permission of the Corporation and the landlord. Those changes are;

- [1] removal of kitchen platform and conversion of kitchen into a bedroom.
- [2] in addition to that reduction of W.C area and bathroom and construction of combined toilet block i.e W.C and bathroom in place of original W.C.
- [3] the passage of W.C and bathroom area is also used for kitchen.

According to P.W.2 Mr. Ogale, entire flooring of Flat No.402 i.e the suit premises is changed for the purpose of beautification. In paragraph 39, the Appellate Court considered evidence of P.W.2 Ogale that the defendants have removed brick walls and made changes and concluded that the defendants

have made material additions and alterations of permanent nature and changed the internal wall structure. Defendant No.2 admitted that defendant No.3 has made all these changes in the suit premises with their consent. The Appellate Court concluded that the defendants are liable to be evicted under section 16 (1) (b) and 16 (1) (a) of the Act r/w section 108 (o) of the T.P. Act.

9. Thus, the Courts below after appreciating the evidence on record have concurrently decreed the suit. In view of aforesaid discussion, it cannot be said that the findings recorded by the Courts below while decreeing the suit under Section 15, 16 (1) (b), 16 (1) (e) and 16 (1) (a) of the Act r/w section 108 (o) of the T.P. Act are contrary to the material on record. Defendant No.3 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.

10. At this stage, Mr. Dudhane orally prays for stay of eviction decree for a period of 8 weeks from today. He states that defendant No.3 and all the adult family members residing with him/using the suit premises will file usual undertaking in this Court within 3 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, applicants will deposit the entire arrears in this Court, under intimation in writing to the learned Counsel for the plaintiff.
- [e] in case they are unable to obtain suitable orders from the higher Court within 8 weeks from today, they will hand over vacant and peaceful possession of the suit premises to the respondents;

11. In view thereof, notwithstanding dismissal of the Civil Revision Application, subject to defendant No.3 filing undertaking in the aforesaid terms within 3 weeks from today, this order shall remain stayed for the period of 8 weeks from today. It is expressly made clear that in case the undertaking is not filed in the aforesaid terms within 3 weeks from today and/or in case defendant No.3 commits breach of any of the conditions of the undertaking, the plaintiff will be at liberty to execute the decree. Order accordingly.

12. List the Petition for reporting compliance on 29th August, 2018.

[R.G. KETKAR, J.]