

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.328 OF 2018

Anil Bharat Savlani ... Applicant
Vs.
Mohamedali Abdul Kadar Patel and another ... Respondents

Mr. P. K. Dhakephalkar, Senior Advocate i/b. Mr. Sameer R. Bhalekar for Applicant.
Mr. N. V. Walawalkar, Senior Advocate i/b. Mr. P. J. Ramchandani for Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : JULY 4, 2018

P.C. :

Heard Mr. Dhakephalkar, learned Senior Counsel for the applicant and Mr. Walawalkar, learned Senior Counsel for the respondent No.1 at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicant, hereinafter referred to as 'defendant No.3', has challenged the judgment and decree dated 21.04.2015 passed by the learned Judge, Court Room No.20 of the Court of Small Causes at Mumbai in R.A.E.Suit No.129/200 of 2009 as also the judgment and decree dated 17.03.2018 passed by the Appellate Bench of the Small Causes Court in Appeal No.233 of 2015. By these orders, the Courts below decreed the Suit instituted by the first respondent, hereinafter referred to as 'plaintiff', and directed defendant No.3 to handover quiet and vacant possession of Godown No.2, ground floor, 9/11, 2nd Sonapur Cross Lane, Chira Bazar, Mumbai 400 002 (for short 'suit premises') to the plaintiff within 3 months from the date of the order. Defendant No.3 was further directed to demolish 3 feet wall constructed in front of the suit premises at his own cost. In case he fails

to do so at the time of the handing over of the possession of the suit premises, the cost of demolition was ordered to be recovered from defendant No.3 by the plaintiff.

3. In support of this Application, Mr. Dhakephalkar submitted that defendant No.1-M/s. Saibaba Electrical Industries (an unregistered partnership firm) was inducted in the suit premises by the then owners. The partners of the said unregistered firm in the year 1974 were Bharat Savlani (husband of defendant No.2-Sushila Savlani) and one Om Prakash Bansal. The said partnership firm was mutually dissolved in or about 1976. Defendant No.2-Sushila Savlani and her husband Bharat Savlani constituted an unregistered partnership firm. On 20.12.2000, Bharat Savlani expired leaving behind defendant No.3-Anil. Defendant No.2-Sushila Savlani also expired. After the death of her husband, defendants No.2 and 3 continued the business in the suit premises of the electrical goods. He submitted that plaintiff did not accept defendants No.2 and 3 as tenants of the suit premises. As the Suit was not between the landlord and tenant, the Suit instituted as such is wholly misconceived and untenable. The plaintiff has not alleged ground of unlawful subletting or that defendants No.2 and 3 are unlawful occupants of the suit premises. The Courts below decreed the Suit on the ground of non-user as contemplated by Section 16(1)(n) of the Maharashtra Rent Control Act, 1999 (for short 'Act').

4. Mr. Dhakephalkar has taken me through the trial Court judgment as also the Appellate Court's judgment and in particular paragraph 14 of the Appellate Court. He submitted that the Suit was instituted in February 2009 on the ground of non-user of the suit premises for the period of more than six months immediately preceding filing of the Suit. The relevant period would be August 2008 to February 2009. Defendant No.3 has produced evidence on record to substantiate his case that the

suit premises were being used continuously during this relevant period. The Courts below were, therefore, not justified in decreeing the Suit under Section 16(1)(n) of the Act.

5. On the other hand, Mr. Walawalkar supported the impugned orders. He submitted that defendant No.3 produced electricity bills for the months of June, July, September, October of 2007 and March, July, October, December of 2009. Defendant No.3 admitted that he could not find electricity bills for the year 2008 and he could not produce electricity bills for the months of January-February 2009. In other words, defendant No.3 did not produce any positive evidence to substantiate that during the relevant period, he was continuously using the suit premises. As far as the telephone bills are concerned, Mr. Walawalkar submitted that in paragraph 18, the Appellate Court noted that two telephone bills produced by the defendant No.3 for the months of August-September 2008 did not show any meter call. No net chargeable calls were assessed. The telephone was, therefore, not in use. Apart from that, the plaintiff had examined 3 witnesses, namely, P.W.2-Vijay Rajaram Dalvi, P.W.3-Surekha Chandrakant Bamne and P.W.4-Regina Paul Selwin, who are the tenants in the suit building. They deposed that defendant No.3 is not using the suit premises as an occupant and has kept it locked and unused since last several years. He, therefore, submitted that the Courts below were fully justified in decreeing the Suit under Section 16(1)(n) of the Act.

6. I have considered the rival submissions advanced by the learned Senior Counsel for the parties. I have also perused the material on record. A perusal of the plaint shows that initially Suit was instituted against defendant No.1- M/s.Saibaba Electrical Industries. In paragraph 10(A) of the amended plaint, plaintiff asserted that defendant No.2 claims to be the widow and defendant No.3 claims to be the son of late

Bharat Savlani, the alleged partner of the defendant No.1 firm. Defendant No.2 has alleged in the written statement that defendant No.1 firm was an unregistered partnership firm and in the year 1974, Bharat Savlani and Omprakash Bansal were the partners. The said firm was mutually dissolved and since about 1976, defendant No.2 and her husband Bharat Savlani continued with the said unregistered partnership firm. After the death of Bharat Savlani, defendants No.2 and 3 alleged to have continued the business of electrical goods in the suit premises. Defendants No.2 and 3 were therefore, joined as proper and necessary parties for proper adjudication of the matter so that they will be bound by the decree that may be passed in the Suit. In paragraph 10B, it was asserted that during the pendency of the Suit, defendant No.2 expired leaving behind defendant No.3 as her only legal heir and representative. In view thereof, I do not find that Suit against defendants No.2 and 3 is not maintainable.

7. A perusal of the evidence of the defendant No.3 shows that defendant No.3 produced electricity bills of June, July, September, October of the year 2007 and March, July, October, December of the year 2009. Defendant No.3 admitted that he could not find electricity bills for the year 2008 and that he could not produce electricity bills for the months of January-February 2009. Thus, in so far as ground of non-user is concerned, the relevant period is August 2008 to February 2009. Defendant No.3 did not adduce any positive evidence establishing user of the suit premises. The Courts below have considered the evidence of tenants in the suit building namely, P.W.2-Vijay Rajaram Dalvi, P.W.3-Surekha Chandrakant Bamne and P.W.4-Regina Paul Selwin. In paragraph 17, the Appellate Court referred to exhibit-34 showing the electricity consumption in respect of the suit premises and noted that Meter No.0427086 indicated 'zero unit' consumption during the period of two years. Meter No.0080901 showed negligible consumption. In

paragraph 18, the Appellate Court referred to electricity bill exhibit-54, which is as indicated earlier, was not for the relevant period apart from the fact that the electricity Meters Number were U085728 and D080404. The Appellate Court also considered telephone bills which showed that there were no meter calls and no net chargeable calls were assessed. Thus, the Courts below, after appreciating the evidence on record, have concurrently held that plaintiffs have established the ground of non-user of the suit premises for more than six months immediately preceding the filing of the Suit. In view thereof, I do not find that the Courts below committed any error in decreeing the Suit. Hence, Application fails and the same is dismissed.

8. At this stage, Mr. Dhakephalkar orally applies for stay of eviction order for a period of 8 weeks from today. He assures that within 2 weeks from today, defendant No.3 and all adult family members using the suit premises will furnish undertaking 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) they will pay arrears of rent, if any, within two weeks from today;
- (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;

9. In view thereof, notwithstanding dismissal of the Petition, subject to the defendant No.3 filing the undertaking in the aforesaid terms

within two weeks from today, eviction decree shall not be executed 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 defendant No.3 commits breach of any of the conditions of the undertaking, plaintiffs will be at liberty to proceed with the matter in accordance with law. In case, defendants are unable to obtain suitable orders from higher Court within a period of eight weeks and do not hand over possession of the suit premises to the plaintiffs, the plaintiffs will be at liberty to proceed with the matter in accordance with law. Respondent No.1-plaintiff is permitted to withdraw the amount deposited by the applicants in the Small Causes Court, unconditionally. Order accordingly.

10. List the Petition for reporting compliance on 25.07.2018.

(R. G. KETKAR, J.)

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