

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL REVISION APPLICATION NO.341 OF 2018
WITH
CIVIL APPLICATION NO. 505 OF 2018

Kusum Kumari Singh	]	Applicant
Vs.		
Sunder Chetandas Jagasia and others.	]	Respondents

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Mr. N.R. Pradhan a/w Mr. Anil Mankar, for the Applicant.
Mr. P.S. Pandey, for Respondents No.1 to 3.

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CORAM : R.G. KETKAR, J.

DATE : 21st SEPTEMBER, 2018.

P.C.

Heard Mr. Pradhan, learned Counsel for the applicant and Mr. Pandey, learned 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'), the applicant, hereinafter referred to 'defendant No.2' has challenged the judgment and decree dated 20th October, 2011 passed by the learned Judge, Court Room No.10 of the Court of Small Causes at Mumbai in R.A.E Suit No.234/336 of 2006 as also the judgment and decree dated 31st January, 2018 passed by the Appellate Bench of the Court of Small Causes at Mumbai in A-1 Appeal No.2 of 2012. By these orders, the Courts below decreed the suit instituted by respondents No.1 to 3, hereinafter referred to as "plaintiffs" under section 16 (1) (g) of the Maharashtra Rent Control Act, 1999 (for short 'Act') and directed the applicant (defendant No.2) and respondent No.4 (defendant No.1) to hand over vacant and peaceful

possession of Flat No.3 situate on the ground floor of Sindhi Immigrants Co-operative Housing Society, Plot No.158-A, Chembur, Mumbai- 400 071 (for short 'suit premises') to the plaintiffs within three months from the date of the order.

3. C.A No.505 of 2018 is taken out by defendant No.2 for issuing direction to the plaintiffs to restore possession of the suit premises as during pendency of this application, the plaintiffs have executed decree on 29th June, 2018.

4. In support of this application, Mr. Pradhan has invited my attention to the case made out by the plaintiffs in paragraph 12 of the plaint. The plaintiffs contended that plaintiff No.2 has two daughters and plaintiff No.3 has one son and one daughter. Plaintiffs No.2 and 3 are unable to marry their daughters due to want of accommodation. Their present accommodation is insufficient to meet their need and they are unable to acquire another accommodation for their daughters. As against this, the Courts below have held that it is the desire of the plaintiffs that after marriage of their daughters daughters should stay along with them. He submitted that the said case is not made out by the plaintiffs. In any case, it is mere wish or desire of the plaintiffs that after marriage of their daughters they should reside along with plaintiffs No.2 and 3. Mere desire of the plaintiffs cannot be equated with the need as contemplated by section 16 (1) (g) of the Act.

5. Mr. Pradhan has taken me through the findings recorded by the learned trial Judge in paragraphs 37 to 49 as also the findings recorded by the Appellate Court in paragraph 24. He submitted that the findings recorded by the Courts below are based upon surmises and conjunctures. In support of his submissions, he relied upon the decision of **Phiroze Bamanji Desai Vs.**

Chandrakant N. Patel and others, (1974) 1 Supreme Court Cases 661. He submitted that in this case the Apex Court laid down that the word “requires” in section 16 (1) (g) means that there must be an element of need before a landlord can be said to “require” premises for his own use and occupation. It is not enough that the landlord should merely desire to use and occupy the premises. What is necessary is that he should need them for his own use and occupation.

6. Mr. Pradhan submitted that as the findings recorded by the Courts below are based on surmises and conjunctures and that they are not applied the principles that govern passing decree under section 16 (1) (g) of the Act, the application requires consideration. Mr. Pradhan further submitted that in any case, as son of plaintiff No.3 has settled down in Dubai, his need no longer subsists. Even on this count, the application requires consideration. He submitted that as the plaintiffs have illegally dispossessed defendant No.2 from the suit premises, C.A. No.505 of 2018 deserves to be allowed, thereby directing the plaintiffs to restore possession of the suit premises to defendant No.2.

7. On the other hand, Mr. Pandey supported the impugned orders. He submitted that the Courts below have concurrently held that the plaintiffs have established that their need is both reasonable as also bona fide. He submitted that this Court cannot re-assess the value of the evidence and interfere with a finding of fact merely because it thinks that the appreciation of the evidence by the Courts below is wrong and the Courts below should have reached a different conclusion of fact from what it did. In other words, this Court cannot re-appreciate the evidence and substitute its own conclusions of fact in place of those reached by the Courts below. He submitted that in the case of **Phiroze Bamanji Desai** (supra), the Apex Court held that finding that

landlord's reasonable and bona fide requirement of premises for his own use and occupation is one of fact. He, therefore, submitted that no case is made out for interfering with the impugned orders.

8. I have considered the rival submissions advanced by the learned Counsel for the parties. I have also perused the material on record. In so far as ground of bona fide requirement under section 16 (1) (g) is concerned, the learned trial Judge has dealt with this aspect in paragraph 37. In paragraph 37, the learned trial Judge noted that plaintiff No.2 is in possession of the premises admeasuring 500 square feet. Plaintiff No.3 is in possession of premises admeasuring 300 square feet. Plaintiff No.2 is having two daughters. Plaintiff No.3 is having one son and one daughter. The plaintiffs have come with a specific case that they have daughters of marriageable age and premises in their possession is not sufficient for them. Plaintiff No.2 has no son and, therefore, he desires that his daughters should stay with him after marriage. Plaintiff No.3 who is a widow also desires that her daughter should stay with her after marriage. In paragraph 49, the learned trial Judge dealt with submission advanced by defendant No.2 that after marriage, every daughter is required to go to her matrimonial home as per the customs followed by the parties and rejected the same.

9. As far as the Appellate Court is concerned, in paragraph 24, the Appellate Court also dealt with this aspect. It is observed that plaintiff No.3 being a widow can reasonably expect that her daughters should stay in the suit premises which is adjacent to her residence. This cannot be termed as abnormal or whimsical wish on the part of plaintiff No.2. Even if submission of Mr. Pradhan is accepted that after marriage of daughters, they are required to go to their matrimonial home, none the less, plaintiff No.3 is having son who at the relevant time was 18 years old. As noted earlier, plaintiff No.3 is in

possession of 300 square feet area. In this view of the matter, I do not find that the Courts below committed error in passing the impugned orders. Mr. Pradhan submitted that son of plaintiff No.3 is settled in Dubai and the said fact came to the knowledge of defendant No.2 only after filing the present C.R.A. The present C.R.A is instituted on 2nd May, 2018 and till today, no document is filed on record to substantiate the plea taken in Civil Application No.505 of 2018. Even if, I accept the contention raised by defendant No.2 in Civil Application No.505 of 2018, at its face value, it cannot be said that son of plaintiff No.3 will not come to Mumbai at any time hereafter and stay in the suit premises along with his mother.

10. Mr. Pradhan relied on the decision of **Phiroze Bamanji Desai** (supra). The Apex Court observed that the finding that the landlord reasonably and bona fide requires the premises for his own use and occupation is one of fact. The Apex Court also observed that High Court cannot re-assess the value of the evidence and interfere with a finding of fact merely because it thinks that the appreciation of the evidence by the Courts below is wrong and the Courts below should have reached a different conclusion of fact from what it did. Thus, applying the tests laid down by the Apex Court in the case of **Phiroze Bamanji Desai** (supra), I do not find that no case is made out for invocation of powers under section 115 of the C.P.C. After considering the material on record, I do not find that the Courts below committed any error in decreeing the suit. 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 they are contrary to the evidence on record. The defendant is not in a position to demonstrate that on the basis of the evidence on record, no reasonable or prudent person would have reached conclusions arrived at by the Courts below. Therefore, no case is made out for invocation of powers under Section 115 of the C.P.C. Hence, C.R.A fails and the same is dismissed.

11. In view of dismissal of C.R.A, Civil Application No.505 of 2018 taken out for restoration of possession of the premises does not survive and is disposed of as such.

[R.G. KETKAR, J.]