Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

CIVIL REVISION APPLICATION NO.638 OF 2016

Dagubai Sonu Madhavai (Dead)	]	
Through her legal heir	]	
1A. Shri Vijay Sonu Madhavai & Anr.	]	Applicants
Vs.		
Sudam Damodhar Malwe (since deceased)	]	
Prakash Sudam Malwe & Ors.	]	Respondents

WITH

CIVIL REVISION APPLICATION NO.689 OF 2016

Shankar Vithal Thorat (Deceased)	]	
Through his legal heirs	]	
1a) Pravatabai Shankar Thorat & Ors.	]	Applicants
Vs.		
Sudam Damodhar Malwe (Deceased)	]	
Thorugh his legal heirs	]	
Prakash Sudam Malwe & Ors.	]	Respondents

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Mr. Sachin Gite, for Applicants in bot the Civil Revision Applications.
Mr. Vivek V. Salunke, for respondents No.1,2,4 and 5 in both the Civil Revision Applicants.

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CORAM : R.G. KETKAR, J.

DATE : 5TH APRIL, 2018.

P.C.

Heard Mr. Gite, learned Counsel for the applicants and Mr. Salunke, learned Counsel for respondents in both the Civil Revision Applications at length.

2. Civil Revision Application No.638 of 2016 takes exception to the

judgment and decree dated 14th March, 2008 passed by the learned Civil Judge, Junior Division, Yeola in Regular Civil Suit No. 201 of 1995 as also the judgment and decree dated 2nd March, 2016 passed by the learned District Judge in Regular Civil Appeal No. 50 of 2008. By order dated 14th March, 2008, the learned trial Judge decreed the suit only under Section 12 and declined to pass decree under section 13(1) (b), 13 (1) (e) and 13 (1) (g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Act'). By order dated 2nd March, 2016, the Appellate Court decreed the suit not only under Section 12 but also under sections 13(1) (b) and 13 (1) (g) of the Act.

3. C.R.A No.689 of 2016 takes exception to the judgment and decree dated 3rd March, 2008 passed by the learned Civil Judge, Junior Division, Yeola in Regular Civil Suit No.202 of 1995 as also the judgment and decree dated 2nd March, 2016 passed by the learned District Judge in Regular Civil Appeal No.49 of 2008. The learned trial Judge decreed the suit only under Section 12 of the Act and declined to pass decree under sections 13 (1) (b) and 13 (1) (g) and 13 (1) (l) of the Act. By order dated 2nd March, 2016, the Appellate Court not only decreed the suit under Section 12 but also under Section 13 (1) (b) and 13(1) (g) of the Act.

4. Controversy in C.R.A. No.638 of 2017 is in respect of Room No.7 admeasuring 20x9 feet situate in Survey No.74-B/2, Yeola and controversy in C.R.A. No.689 of 2016 is in respect of Room No.8 situate at Survey No.74-B/2, Yeola, Dist. Nashik (for short “suit premises”). Since, common question of law and facts arise in these CRA's the same can conveniently be disposed of by this common order. In order to appreciate controversy raised between the parties, facts from C.R.A No.638 of 2016 are taken into consideration.

5. In support of this Application, Mr. Gite submitted that the respondent/plaintiff had issued demand notice on 9th May, 1995 alleging that the applicant/defendant is in arrears of rent from 1st September, 1993 to 31st March, 1995. The monthly rent was Rs.30/-. The plaintiff instituted the suit on 19th October, 1995 for eviction of the defendant invoking several grounds. The learned trial Judge decreed the suit only under Section 12 of the Act. He submitted that immediately after receipt of the demand notice, the defendant had remitted amount of Rs. 570/- by money order. The learned trial Judge held that issues were framed on 27th August, 1996 i.e being the first day of hearing, the defendant had not deposited entire amount then due along with interest @ 9% per annum as on 27th August, 1996. He submitted that the finding recorded by the learned trial Judge in paragraphs 17 to 21 are not borne out from the record.

6. In so far as District Court is concerned, he submitted that the learned District Judge extracted paragraph 17 of the trial Court's judgment and did not give any independent reason for decreeing the suit u/s 12. He has invited my attention to paragraphs 18 & 19 of the District Court's judgment.

7. As far as the ground of bona fide requirement is concerned, the learned District Judge has framed point No.2 which covers grounds u/s 13 (1) (b) and 13 (1) (g) of the Act. The learned District Judge discussed ground u/s 13 (1) (g) in paragraphs 13 to 20. A perusal of these paragraphs shows that the learned District Judge did not discuss the finding recorded by the learned trial Judge in paragraph 27 as regards ground of bona fide requirement. As far as ground u/s 13 (1) (b) is concerned, the learned District Judge simply stated that the learned trial Judge did not consider this issue and erroneously decided against the plaintiff. He, therefore, submitted that impugned orders may be set aside or matters may be remitted to the trial Court for deciding afresh.

8. On the other hand, Mr. Salunke supported the impugned orders. He submitted that the Courts below have concurrently held that the defendant has not complied with requirement of Section 12 (3) (b) of the Act. On the first date of hearing, the defendant did not deposit entire amount then due together with interest @ 9%. He, therefore, submitted that no case is made out for interfering with the ground of eviction u/s 12 of the Act.

9. As far as the ground u/s 13 (1) (g) is concerned, he invited my attention to admission of the defendant in the cross-examination. The defendant admitted that two rooms situate in the suit building are in a dilapidated condition. He submitted that having regard to the fact that there are 50 members in the family of the plaintiff, the learned District Judge was justified in decreeing the suit on that ground.

10. As far as ground u/s 13 (1) (b) is concerned, he submitted that the learned trial Judge declined to pass decree on the ground that notice issued by the Council was not proved. As against this, the learned District Judge observed in para 21 that notice issued by Municipal Council at Exhibit 85 shows that the defendant carried out material alterations without permission of the Municipal Council as also without written prior permission of the plaintiff. He, therefore, submitted that the learned District Judge was justified in decreeing the suit u/s 13(1) (b) and 13 (1) (g) of the Act.

11. I have considered rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. In so far as ground u/s 12 (1) (b) of the Act is concerned, the learned trial Judge has considered this aspect in paragraph 17 to 21 and 32. The learned trial Judge held that the demand notice dated 9th May, 1995 was valid. The admitted rent was Rs. 30/- per month. The defendant was in arrears from 1st September, 1993 to 31st

March, 1995 which comes to Rs.570 (30x19 months). The amount payable from 1st April, 1995 till the first date of hearing i.e 27th August, 2016 would be for a period of 17 months. Thus, the defendant was liable to deposit Rs. 510/- (17x30). As against this, the defendant deposited amount which was short of Rs. 180/-. That apart, the defendant did not deposit entire amount then due on the first date of hearing along with interest @ 9% per annum.

12. As far as the District Court is concerned, in paragraph 18, the learned District Judge reproduced paragraph 17 of the trial Court's judgment and in paragraph 19 observed that the defendant did not deposit interest component. For the reasons recorded by the learned trial Judge in paragraphs 17, 21 and 32 and by the learned District Judge in paragraphs 18 & 19, I do not find that the Courts below committed any error in decreeing the suit u/s 12 of the Act.

13. Mr. Gite, however, submitted that as the defendant had remitted entire amount of Rs. 570/- claimed by the plaintiff by the demand notice dated 9th May, 1995, there was no cause of action for filing suit u/s 12 of the Act. As against this, Mr. Salunke relied on the decision in the case **Babulal s/o Fakirchand Agrawal Vs Suresh s/o Kedarnath Malpani & Ors, 2017 (4) Bom. C.R. 495.** In paragraph 25, it was held by the Full Bench thus,

> "25. To infer that once the tenant pays the amount recorded in the notice or tenders the same, the landlord has no right to institute a suit for recovery of possession for non-payment of those arrears or continue with such proceeding for eviction and no decree for possession can be asked for, is not within contemplation of provisions of section 15 of the Act. The provision does not interfere with the right of the landlord to initiate proceeding for eviction, however, sub-section (2) of section 15 prescribes pre-condition for presentation of suit, that is to say that no suit can be initiated without issuing a notice within contemplation of said sub-section

> (2) of section 15 and tenant's entitlement to claim relief against forfeiture shall be subject to fulfillment of conditions stipulated under sub-section (1) and (3) of section 15 of the Rent Act".

14. In view thereof, I do not find any merit in the submission of Mr. Gite that the plaintiff was not entitled to invoke ground u/s 12 of the Act. That brings me to ground u/s 13 (1) (b) and 13 (1) (g) of the Act. As noted earlier, the learned trial Judge declined to pass decree u/s 13 (1) (b) and 13 (1) (g) of the Act. As against this, the learned District Judge decreed the suit on these grounds also. As well, the learned District Judge framed point No.2 which is to the following effect and answered the same'

	POINT	FINDING
02	Whether the respondents prove that they are also entitled to get the decree of eviction not only on the ground of default, but also on the ground of bona fide need and occupation and material alterations in the suit property by the appellants/defendants?	In affirmative

15. A perusal of the extracted portion shows that the learned District Judge clubbed grounds u/s 13 (1) (b) and 13 (1) (g) of the Act. In my opinion, the learned District Judge ought to have framed separate points covering these two grounds. Be that as it may, the learned District Judge dealt with ground u/s 13 (1) (g) of the Act in paragraph 20. A perusal of paragraph 20 shows that the learned District Judge did not consider the documents that were considered by the learned trial Judge in paragraph 27. The defendant filed 7/12 extract and property extract Exh. 74 to 86. The learned trial Judge also noted that the plaintiff has 3 stroey building namely "Damodhar Niwas" and that it was admitted by the plaintiff that he had sold out some shop and plot of Damodar Niwas to other persons. The learned District Judge has not touched this aspect at all. The learned trial Judge noted that there were 50 members in the family of the plaintiff and they require the suit premises for

their use and occupation. In my opinion, the learned District Judge has not satisfactorily dealt with the ground u/s 13 (1) (g). When the District Judge reversed finding of the trial Court, he has to deal with the reasons given by the learned trial Judge as also must have given independent reasons for arriving at different conclusion. The discussion in respect of ground u/s 13 (1) (g) of the Act is far from satisfactory. The same is also in respect of ground u/s 13 (1) (b) of the Act. Whereas, the learned trial Judge declined to pass decree on the ground that the plaintiff did not prove contents of the notice at Exhibit 85. Without dealing with that aspect, the learned District Judge observed that the learned trial Judge erroneously decided this aspect. The finding recorded by the District Judge are far from satisfactory. In view thereof, it is not possible to uphold the findings recorded by the learned District Judge u/s 13 (1) (b) and 13 (1) (g) of the Act. The learned District Judge was not justified in passing the decree on these grounds.

16. Defendants are 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 the evidence on record no reasonable or prudent person would have come to that conclusion. Defendants are not in a position to show that the findings recorded by the Courts below are contrary to evidence on record. The Courts below have concurrently passed decree u/s 12 of the Act which finding I have upheld. In view thereof, no case is made out for invocation of powers under section 115 of C.P.C. Civil Revision Applications fail and the same are dismissed.

[R.G. KETKAR, J.]