

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.311 OF 2015

WITH

CIVIL APPLICATION NO.275 OF 2015 IN C.R.A.No.311/15

N. Madhavrao Ramaswami	...	Applicant
Vs.		
Suresh Sudarshanprasad Agarwal	...	Respondent

ALONG WITH

CIVIL REVISION APPLICATION NO.312 OF 2015

WITH

CIVIL APPLICATION NO.277 OF 2015 IN C.R.A.No.312/15

Sunanda Shahikant Prasad and another	...	Applicants
Vs.		
Suresh Sudarshanprasad Agarwal	...	Respondent

Mr. Saurabh M. Railkar i/b. Mr. Nitin Gandhi for Applicant in CRAs.
Mr. Abhijeet Joshi i/b. Mr. Akshay Patkar for Respondent.

CORAM : R. G. KETKAR, J.

DATE : MARCH 12, 2018

P.C. :

Heard Mr. Railkar, learned Counsel for applicant and Mr. Joshi, learned Counsel for respondent in both the C.R.As. and Civil Applications at length.

2. C.R.A.No.311 of 2015 takes exception to the judgment and decree dated 24.04.2015 passed by the learned District Judge-9, Thane in Civil Appeal No.103 of 2011. By that order, the learned District Judge allowed the appeal preferred by the respondent, hereinafter referred to as 'plaintiff', and quashed and set aside the judgment and decree dated 29.04.2011 passed by the learned 6th Joint Civil Judge, Junior Division, Thane in Regular Civil Suit No.650 of 2001. The

learned District Judge directed the applicant-defendant to handover vacant and peaceful possession of shop No.1 admeasuring 180 sq.ft. situate on the ground floor of Agarwal Niwas situate at Arora Estate, Padwal Nagar, Wagle Estate, Thane, among other directions. Civil Application No.275 of 2015 is taken out for stay of the order passed by the learned District Judge.

3. C.R.A.No.312 of 2015 takes exception to the judgment and decree dated 24.04.2015 passed by the learned District Judge-9, Thane in Civil Appeal No.102 of 2011. By that order, the learned District Judge allowed the appeal and quashed and set aside the judgment and decree dated 29.04.2011 passed by the learned 6th Joint Civil Judge, Junior Division, Thane in Regular Civil Suit No.648 of 2001. The learned District Judge directed the applicants-defendants to handover vacant and peaceful possession of shop No.3 admeasuring 180 sq.ft. situate on the ground floor of Agarwal Niwas situate at Arora Estate, Padwal Nagar, Wagle Estate, Thane, among other directions. Civil Application No.277 of 2015 is taken out for stay of the order passed by the learned District Judge.

4. Since these C.R.As raise common questions of law and fact, the same can conveniently be disposed of by this common order. In order to appreciate the controversy raised between the parties, facts from C.R.A.No.311 of 2015 are taken into consideration.

5. In support of this Application, Mr. Railkar strenuously contended that the appellate Court committed serious error in decreeing the Suit. In fact, the learned trial Judge should have declined to pass decree on the ground that defendant is in arrears of rent as contemplated by Section 15 of the Maharashtra Rent Control Act, 1999. He has taken me through the finding recorded by the learned trial Judge. The learned trial Judge

held that the plaintiff failed to prove that the defendant is a defaulter. This aspect is discussed by the trial Court from paragraphs 4 to 7. The learned trial Judge observed that in cross-examination, plaintiff admitted that defendant deposited the rent in the Court and the same was withdrawn by him. This admission is sufficient to come to the conclusion that the defendant is not a willful defaulter as contemplated by Section 15 of the Act. The learned trial Judge further observed that plaintiff gave reply to notice at exhibit 23/5 dated 12.04.1999. Plaintiff's reply was however silent as regards defendant's being in arrears of rent.

6. As far as the impugned order is concerned, he has taken me through the finding recorded by the learned District Judge from paragraphs 8.3 onwards to contend that the learned District Judge was not justified in decreeing the Suit under Section 15 of the Act.

7. On the other hand, Mr. Joshi supported the impugned order. He submitted that the defendant came with the case that he has paid substantial amount towards repair of the building. Though defendant has come with this case, he did not state in the written statement as to how much amount he had spent for carrying out repairs along with other tenants and occupants. Even in the cross-examination, he did not state how much amount he has contributed for necessary repairs. He also did not bring on record necessary permission from the Municipal Corporation of City of Thane for carrying out repairs. He, therefore, submitted that no case is made out for interfering with the impugned order.

8. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is evident from record that plaintiff issued demand notice dated 16.02.2000 through his Advocate calling upon the defendant to

pay the rent and terminated the tenancy. The notice was sent to the defendant through Registered Post A.D., exhibit 28 and Under Certificate of Posting, exhibit 29. The arrears were for the period from June 1998 to March 2000. The amount of rent due from the defendant was Rs.5,368/-. In addition, defendant was liable to pay Rs.2,928/- being the compensation from the month of April 2000 to March 2001 for the unlawful occupation of the suit premises.

9. Defendant came with the contention that as plaintiff failed to carry out the repairs of the building, defendant along with other occupants / tenants approached the Corporation through memorandum dated 06.07.1999 and requested to give permission to carry out necessary repairs of the building. The defendant and other occupants / tenants contributed expenses and carried out the repairs. They are paying water charges, common electricity charges and other municipal charges separately.

10. The learned District Judge has considered the material on record. In paragraph 8.1, the learned District Judge noted undisputed fact that defendant has not paid rent from 1998 as admitted in the cross-examination. Defendant also admitted service of demand notice and in spite of service of notice had not paid rent to the plaintiff. He also did not send rent through cheque or money order. He also did not deposit arrears of rent in the Court within 90 days from the date of service of suit summons. The learned District Judge considered the contention of the defendant that as he along with other occupants / tenants carried out repairs and incurred expenditure, he cannot be termed as a defaulter within the meaning of Section 15 of the Act. For the reasons recorded in paragraphs 8.4 to 8.7 of the impugned order, I do not find that the learned District Judge has committed any error in decreeing the Suit on the ground of arrears of rent. Defendant was not in possession to

demonstrate that the findings recorded by the appellate Court are perverse being based upon no evidence or that they are contrary to the evidence. It also cannot be said that no reasonable or prudent person would have reached the conclusion arrived at by the appellate Court. Hence, no case is made out for invocation of powers under Section 115 of C.P.C. Application fails and the same is dismissed.

11. In view of the dismissal of the Civil Revision Applications, Civil Applications No.275 of 2015 and 277 of 2015 for stay do not survive and the same are disposed of.

(R. G. KETKAR, J.)

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