

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.312 OF 2018

The Municipal Corporation of Greater Mumbai ... Applicant
Vs.
Madhushree Praful Ghatge ... Respondent

Mr. N. V. Walawalkar, Senior Advocate a/w. Mr. Pradeep Patil i/b. Mr. J. J. Xavier for Applicant.
Mr. S. D. Mogre for Respondent.

CORAM : R. G. KETKAR, J.
DATE : JUNE 27, 2018

P.C. :

Heard Mr. Walawalkar, learned Senior Counsel for the applicant and Mr. Mogre, learned Counsel for the respondent 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', has challenged the judgment and decree dated 21.04.2011 passed by the learned Judge, Court Room No.14 of the Court of Small Causes at Bombay in R.A.E.Suit No.456/837 of 2008 as also the judgment and decree dated 04.04.2018 passed by the Appellate Bench of the Small Causes Court at Bombay in (2a) Appeal No.36 of 2011. By these orders, the Courts below decreed the Suit instituted by the respondent, hereinafter referred to as 'plaintiff', under Section 16(1)(n) of the Maharashtra Rent Control Act, 1999 (for short 'Act').

3. In support of this Application, Mr. Walawalkar strenuously contended that the Courts below committed serious error in decreeing the Suit under Section 16(1)(n) of the Act. In any case, the Courts below ought to have directed the plaintiff to pay Rs.83,53,114.49/- as compensation to the defendant-Corporation. He has invited my attention to paragraphs 30 and 31 of the Appellate Court judgment. He submitted

that in fact, vide letter dated 03.03.2003, defendant-Corporation raised demand of Rs.83,53,114.49/- to Dr. K. N. Modak towards relinquishing their right, title and interest as a tenant in the suit premises. Dr. K. N. Modak executed Power of Attorney in June 1997 in favour of Mahendra R. Thakur. By letter dated 12.04.2007, Mahendra Thakur called upon the defendant to issue fresh demand note towards compensation and agreed to pay the same vide letter dated 30.07.2007. He submitted that as the agent duly authorized by the principal namely, Dr. K. N. Modak agreed to pay compensation, the Courts below ought to have directed the plaintiff to pay compensation of Rs.83,53,114.49/- for relinquishing tenancy rights.

4. On the other hand, Mr. Mogre supported the impugned orders. He invited my attention to paragraph 27 of the Appellate Court judgment where the Appellate Court noted that since 14.06.1997, it is admitted position that defendant is not using the suit premises for any education activity for which it was let out. In other words, the Courts below, after appreciating the evidence on record, have concurrently held that plaintiff has established the ground of non-user under Section 16(1)(n) of the Act. As far as the payment of compensation is concerned, he submitted that for the reasons recorded in paragraph 31 by the Appellate Court, defendant is not entitled to claim any compensation.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. A perusal of the impugned orders clearly shows that it is an admitted position that from 14.06.1997, defendant is not using the suit premises for any educational activity for which it was let out. The findings recorded by the Courts below are based upon the evidence on record and cannot be said to be perverse. Mr. Walawalkar strenuously prays for payment of compensation of Rs.83,53,114.49/-. In paragraph

31, the Appellate court noted that Dr. K. N. Modak died on 31.12.1999 and consequently, the Power of Attorney given by him in favour of Mahendra R. Thakur in June 1997 came to an end. In other words, the agency did not continue thereby authorizing Mahendra R. Thakur to exchange correspondence with the defendant after the death of Dr. K. N. Modak. The Appellate Court further noted that defendant did not raise any demand to the legal heirs of Dr. K. N. Modak and the Power of Attorney who has ceased to be lawful attorney of Dr. Modak has no authority after his death. The Appellate Court therefore, held that defendant failed to establish that they are entitled to receive compensation from the plaintiff.

6. For the reasons recorded in paragraphs 27 to 29 of the Appellate Court judgment, I do not find that the Courts below committed any error in decreeing the Suit. The defendant failed to establish any reasonable cause for not using the suit premises for more than 21 years. Hence, Application fails and the same is dismissed.

7. At this stage, Mr. Walawalkar orally applies for stay of the eviction decree for a period of 4 weeks from today. He assures that within 2 weeks from today, defendant using the suit premises will furnish undertaking, with 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 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) in case they are unable to obtain suitable orders from the higher Court within four weeks from today, they will hand over

vacant and peaceful possession of the suit premises to the plaintiff;

8. In view thereof, notwithstanding dismissal of the Application, subject to the defendant filing the undertaking in the aforesaid terms within two weeks from today, eviction decree shall not be executed for the period of four 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 commits breach of any of the conditions of the undertaking, plaintiff will be at liberty to proceed with the matter in accordance with law. In case, defendant is unable to obtain suitable orders from higher Court within a period of four weeks and do not hand over possession of the suit premises to the plaintiff, the plaintiff will be at liberty to proceed with the matter in accordance with law. Order accordingly.

9. List the Application for reporting compliance on 18.07.2018.

(R. G. KETKAR, J.)