

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

CIVIL REVISION APPLICATION NO.440 OF 2016

WITH

CIVIL APPLICATION NO.126 OF 2017

Rajendraprasad Gangacharan Pardeshi & Anr.] Applicants

Vs.

Anuradha Anil Bhagwat & Ors.] Respondents

WITH

WRIT PETITION [ST] NO.17562 OF 2016

Anuradha Anil Bhagwat & Ors.] Petitioners

Vs.

Rajendraprasad Gangacharan Pardeshi & Anr.] Respondents

.....

Mr. Uday Warunjikar, for applicants in C.R.A No.440 of 2016 and for respondents in W.P. (ST) No.17562 of 2016.

Ms. Shruti Tulpule, for petitioners in W.P. (ST) No.17562 of 2016 and for respondents No. 1 to 4 in C.R.A No.440 of 2016.

Mr. Uday Warunjikar a/w M.V. Rajput, for applicant in C.A. No.126 of 2017.

.....

CORAM : R.G. KETKAR, J.

DATE : 16TH JULY, 2018.

P.C:

Heard Mr. Warunjikar, learned Counsel for the applicants in C.R.A No.440 of 2016 and C.A. No. 126 of 2017 and for respondents in W.P. (ST) No.17562 of 2016 and Ms. Tulpule, learned Counsel for petitioners in W.P. (ST) No.17562 of 2016 and for respondents No.1 to 4 in C.R.A No.440 of 2016 at length.

2. C.R.A No.440 of 2016 is instituted by the original defendants challenging the judgment and decree dated 27th January, 2014 passed by the learned third Joint Civil Judge, Junior Division, Solapur in Regular Civil Suit No.653 of 2009 as also the judgment and decree dated 31st March, 2016 passed by the learned District Judge-2, Solapur in Civil Appeal No.65 of 2014. By these orders, the Courts below decreed the suit instituted by the respondents, hereinafter referred to as “plaintiffs” only under section 16 (1) (g) of the Maharashtra Rent Control Act, 1999 (for short 'Act'). The Courts below have turned down the ground of arrears of rent as contemplated under section 15 of the Act. As the trial Court turned down the ground of arrears of rent under section 15, the plaintiffs preferred Cross Objection. The appeal preferred by the defendants and the cross objections were dismissed by the learned District Judge. It is against that order, the plaintiffs have instituted Writ Petition (ST) No.17562 of 2016, inter alia, contending that the Courts below should have passed decree even on the ground of arrears of rent under section 15 of the Act.

3. In support of the Civil Revision Application application filed by the defendants, Mr. Warunjikar has taken me through paragraph 5 of the plaint, paragraphs 6 to 12 of the written statement, findings recorded by the learned trial Judge against issues No.6 and 8 (section 16 (1) (g) and comparative hardship). Mr. Warunjikar has invited my attention to the points framed by the learned District Judge. He submitted that the learned District Judge did not frame any point dealing with issue of comparative hardship. He invited my attention to paragraph 21 of the Appellate Court's judgment. He submitted that discussion in paragraph 21 deserves to be ignored as plaintiff did not invoke ground of non user as contemplated under section 16 (1) (n) of the Act.

4. Mr. Warunjikar submitted that need pleaded by the plaintiffs is neither reasonable nor bona fide but is illusory. The plaintiffs have not adduced any evidence to substantiate increase in vehicles as also increase in population. That apart, the defendants have brought on record availability of other premises viz;

- [1] The plaintiffs are in possession of a popcorn shop.
- [2] One generator room admeasuring 30'x12'.
- [3] One room admeasuring 25'x8' between suit premises and popcorn shop.

Thus, the plaintiffs have several premises which are suitable to substantiate their need. As against this, he submitted that suit premises admeasures about 10 feet South North in length and 5 feet East West in width. As against area of 50 square feet, the plaintiffs are in possession of several premises which will substantiate their need.

5. Mr. Warunjikar further submitted that not framing point of comparative hardship by the Appellate Court has resulted into miscarriage of justice. The defendants were not in a position to demonstrate that by passing eviction decree, greater hardship will be caused to them. He has also invited my attention to C.A. No.126 of 2017 filed by the defendants under Order-XLI, Rule-27 of the C.P.C and in particular paragraph 3 thereof for adducing additional evidence. In paragraph 3, it is contended that Bhagwat Chitra Mandir Theater business is closed permanently from 2nd October, 2016. Mr. Warunjikar has also invited my attention to paragraph 6 of the reply filed by the plaintiffs wherein the plaintiffs came with the case that the business of Bhagwat Chitra Mandir Theater is not permanently closed down but they are renovating the premises. Mr. Warunjikar submitted that as the plaintiffs have also filed cross objection challenging the decrees passed by the Courts below, this application requires consideration.

6. On the other hand, Ms. Tulpule supported the impugned order challenged in C.R.A. She submitted that in the same lay out, there are as many as four theaters;

- [1] Chitra Mandir
- [2] Uma Mandir
- [3] Chaya Mandir and
- [4] Kala Mandir.

There is common parking space for all these theaters. Keeping in view convenience of the public at large, the plaintiffs require the suit premises for ticket booking window. She submitted that if the Court is inclined to dismiss C.R.A filed by the defendants, she has instructions not to press Writ Petition filed by the plaintiffs. She further submitted that after carrying out renovation work, business of theater is resumed.

7. I have considered rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. As noted earlier, the plaintiffs have instituted suit invoking grounds under sections 15 and 16 (1) (g) of the Act. The Courts below have decreed the suit only under section 16 (1) (g). In so far as reasonable and bona fide requirement is concerned, with the assistance of learned Counsel for the parties, I have perused paragraph 5 of the plaint where the plaintiffs have invoked ground under section 16 (1) (g) of the Act as also paragraph 6 of the written statement of the defendants. As far as ground of bona fide and reasonable requirement is concerned, the learned trial Judge has considered this aspect in paragraphs 23 to 25. In so far as the District Court is concerned, the learned District Judge has considered this ground in paragraphs 18 to 21. After considering the evidence on record, the Courts below have decreed the suit under section 16 (1) (g) of the Act.

8. In so far as contention of the defendants that the plaintiffs are having other suitable premises namely one vacant popcorn shop, generator room admeasuring 30'x12' and other room admeasuring 25'x8' between suit premises and popcorn shop is concerned, the learned District Judge has considered this aspect in paragraphs 19 to 21. The learned District Judge observed that the suit premises is necessary for ticket booking window. The question is not whether the plaintiffs are in possession of some other premises but the question is whether other premises are suitable for business of the plaintiffs because the plaintiffs have specifically pleaded that they need the suit premises for business purpose. The learned District Judge observed that admittedly theater is situate on the ground floor and therefore, it is necessary to open new ticket booking window on the ground floor only and from the evidence on record no other suitable space is available except the suit premises for opening new ticket window. For the reasons recorded by the Courts below, I do not find that the Courts below have committed any error while decreeing the suit under section 16 (1) (g) of the Act.

9. Mr. Warunjikar submitted that the learned District Judge, however, did not frame point on the issue of comparative hardship. Equally, I do not find any merit in this submission. In paragraph 21, the learned District Judge after considering the evidence on record held that the defendants are not using the suit premises. For arriving at this conclusion, the learned District Judge referred to the electricity bills showing electricity consumption. After considering the evidence on record, the learned District Judge held that the defendants are not doing their business in the suit premises. Mr. Warunjikar submitted that this discussion is wholly irrelevant as ground of non-user under section 16 (1) (n) of the Act is not invoked. I do not find any merit in this submission. These findings are essentially for considering the question of comparative hardship from the point of view of the defendants. If the

defendants are not carrying on business in the suit premises, obviously there cannot be greater hardship to them in the event of passing eviction decree.

10. In so far as closure of the theater from 2nd October, 2016 is concerned, a perusal of paragraph 6 of the reply filed by the plaintiffs shows that the business was temporarily closed down for carrying out renovation work. In view thereof, in the light of the aforesaid discussion, I do not find that any case is made out by the defendants for adducing evidence under Order-XLVI, Rule-27 of the C.P.C. Hence, C.R.A No.440 of 2016 filed by the defendants is dismissed. In view of dismissal of C.R.A, C.A. No.126 of 2017 does not survive and the same is disposed of. Writ Petition (ST) No.17562 of 2016 is disposed of as not pressed. Order accordingly.

11. At this stage, Mr. Warunjikar orally prays for continuation of interim arrangement recorded by this Court in the order dated 5th December, 2016 for a period of eight weeks from today. He assures that defendants and all the adult family members using the suit premises will file usual undertaking in this Court within two weeks from today, after giving 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 interest nor parted with possession of the suit premises;
- (c) they will hereafter neither create third party interest nor part with possession of the suit premises;
- (d) within two weeks from today, applicants will deposit the arrears, if any, in this Court under due intimation to the learned Advocate for the plaintiffs.
- (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;

12. Subject to the defendants filing undertaking in the aforesaid terms within two weeks from today, interim arrangement referred in the order dated 5th December, 2016 shall remain in force for a period of eight weeks from today. It is expressly made clear that in case undertaking is not filed in the aforesaid terms within two weeks from today, interim arrangement shall stand vacated. 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. Order accordingly.

13. List the Petition for reporting compliance on 6th August, 2018.

[R.G. KETKAR, J.]