

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 363 OF 2018

Mrs. Usha Surseshchandra Bhatt	
And others	Applicants
<i>Versus</i>	
Shri Surendra Ratansi Savla	...Respondent

WITH

Civil Revision Application NO. 405 OF 2018

Shri Surendra Ratansi Savla	...Applicant
<i>Versus</i>	
Mrs. Usha Sureshchandra Bhatt	
And others	...Respondents

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Mr. P.S. Dani, Senior Advocate i/b. Jaydeep Deo, Advocate for the Applicants in C.R.A. No.363/2018 and for the respondents in C.R.A. No.405/2018.

Mr. Jitendrakumar G. Damani, Advocate for the Respondent in C.R.A. No.363/2018 and for the applicant in C.R.A. No.405/2018.

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CORAM : R. G. KETKAR, J.

DATE : 09th AUGUST, 2018

P.C.

1. Heard Mr.P.S. Dani, learned Senior Counsel for the applicants in C.R.A. No.363/2018 & for the respondents in C.R.A. No.405/2018 and Mr.Jitendrakumar Damani, learned counsel for the respondent in C.R.A. No.363/2018 & for the applicant in C.R.A. No.405/2018, at length.

2. C.R.A. No.363/2018 is instituted by the applicants, hereinafter referred to as the 'plaintiffs', challenging the judgment and decree dated 2.5.2018 passed by the Appellate Bench of the Small Causes Court at Bombay (Bandra Branch) in (A1) Appeal No.38 of 2016 to the extent of holding that the respondent, hereinafter referred to as the 'defendant', is entitled to area of 609.27 sq. ft. in 'A' Wing.

3. C.R.A. No.405/2018 is instituted by the defendant challenging the judgment and decree passed by the Courts below on the ground that the Courts below were not justified in decreeing the suit instituted by the plaintiffs. It is the case of the defendant that the suit instituted by the plaintiffs is misconceived and is not maintainable and was liable to be dismissed. The defendant contended that plaintiffs No.1 to 3 are the owners of the property in question and plaintiff No.4 is the developer. Subsequently, plaintiffs No.5 to 9 were added on the basis that they have obtained Probate from this Court in respect of the Will of Lilavati Laxmidas Bhatt and thus they became owner. The defendant contended that basically for passing eviction decree under Section 16(1) (i), it is for the landlord to plead and establish reasonable and bonafide requirement. In the instant case, the landlords have failed to establish that their requirement is reasonable and bonafide. The Courts below failed to appreciate that the requirement was only of plaintiff No.4 who

is a developer and not the owner and, therefore, the Courts below were not justified in passing the eviction decree. While decreeing the suit, the learned trial Judge directed the defendant to hand over vacant and peaceful possession of rooms No.4 & 5, Chawl No.12, Bhatt Wadi, Final Plot No.75, Jambli Galli, Borivali (West), Mumbai – 400 092 to the plaintiffs subject to the plaintiffs giving and complying that undertaking under Section 16(6)(d) of the Maharashtra Rent Control Act, 1999 (for short, 'Act'). While partly allowing the appeal, the Appellate Court held that the defendant is entitled to an area of 609.27 sq. ft. carpet area as per the development agreement at Exhibit-32. The controversy was whether the defendant is entitled to premises in Wing “A” on one and Wings “C” or “D” on the other. The Appellate Court considered this aspect in paragraphs-31, 38 and 39 and modified the trial Court's decree by directing the plaintiffs to allot flat admeasuring 609.27 sq. ft. carpet area in Wing “A”.

4. The matter was heard at length on 7th August, 2018 and was kept today for passing orders. Mr. Dani states that Mr.Suketu Trivedi, the Partner of plaintiff No.4 M/s. Fortune Constructions is present in the Court. Mr. Dani has tendered a photo-copy of his Aadhaar Card, which is taken on record and marked 'A' for identification. Upon taking instructions from him, Mr. Dani submits that the plaintiffs are ready and

willing to allot flat admeasuring 609.27 sq. ft. carpet area in “A” Wing either on 4th, 5th or 6th floor to the defendant on tenancy basis, subject to obtaining Occupation Certificate from the Corporation. He submits that the plaintiffs will submit revised plans to the Corporation within four weeks from today. He further submits that within one week from today as and by way of stop-gap and temporary arrangement, the plaintiffs are willing to hand over flat No.203 admeasuring 609.27 sq. ft. carpet area in “C” Wing to the defendant.

5. Mr. Dani further states that the plaintiffs will offer a flat admeasuring 609.27 sq. ft. carpet area in “A” Wing within approximately three years from today, subject to obtaining Occupation Certificate from the Corporation. Mr. Dani assures that after the revised plans are sanctioned, inspection of said revised plans will be given to the defendant within one week from obtaining sanction from the Corporation. He states that within one week from today, undertaking on the above lines will be filed with advance copy to other side.

6. Mr. Damani states that the defendant is present in Court today. He has tendered a photo-copy of his Aadhaar Card, which is taken on record and marked “B” for identification. Upon taking instructions from him, Mr. Damani states that within one week from offering flat

No.203 in “C” Wing, the defendant will shift there and hand over possession of the suit premises to the plaintiffs within two weeks from today. The defendant is ready and willing to accept the allotment of flat in “A” Wing admeasuring 609.27 sq. ft. carpet area either on 4th, 5th or 6th floor on tenancy basis. The defendant will hand over vacant and peaceful possession of flat No.203 in “C” Wing within two weeks from the plaintiffs offering to occupy flat in “A” Wing and he will accordingly shift. Mr. Damani states that within one week from today, the defendant will file undertaking on the aforesaid lines in this Court.

7. In view thereof, as the parties have arrived at consensus on the above lines, both Civil Revision Applications are disposed of in terms of the above order. In the meantime, within one week from today the parties shall file undertakings, as aforesaid, with advance copy to other side. List Civil Revision Applications for reporting compliance on **20.8.2018** high on board. Order accordingly.

Pradipkumar
Prakashrao
Deshmane
Digitally signed
by Pradipkumar
Prakashrao
Deshmane
Date: 2018.08.10
17:48:10 +0500

(R. G. KETKAR, J.)

Deshmane (PS)