

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 606 OF 2017
With
Civil Application No.403 of 2017
In
Civil Revision Application NO. 606 OF 2017

Prashant Vithal Tanpure
And Ors.

...Applicants

Versus

Ganpat Shatrughna Aadkar

...Respondent

....

Mr. Ajit J. Kenjale, Advocate for the Applicants.

....

CORAM : R. G. KETKAR, J.

DATE : 16th APRIL, 2018

P.C.

1. Heard Mr.Ajit Kenjale, learned counsel for the applicants, at length.

2. By this application under Section 115 of Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicants, hereinafter referred to as the 'defendants' have challenged the judgment and decree dated 5.4.2017 passed by the Appellate Court of the Small Causes Court in (A-1) Appeal No.88/2012. By that order, the Appellate Court partly allowed the appeal and quashed and set aside the judgment and decree dated 27.2.2012 passed by the learned Judge, Court Room No.13 of the Court of Small Causes Court at Bombay in R.A.E. & R. Suit

No.1778/2003. The Appellate Court partly decreed the suit and directed the defendants to hand over vacant and peaceful possession of Room No.4, Bhagvati Niwas, Near J.S. Bhat Chawl, Bhatwadi, Ghatkopar, Mumbai- 400 084 (for short, 'suit premises') to the respondent, hereinafter referred to as the 'plaintiff', within 60 days from the date of the order. The defendants are further restrained from parting with the suit premises or creating third party interest therein in any manner whatsoever.

3. In support of this application, Mr. Kenjale submitted that the plaintiff has instituted suit for recovery of possession of the suit premises invoking the grounds under Sections 15 and 16(1)(g) of the Maharashtra Rent Control Act, 1999 (for short,'Act'). The learned trial Judge dismissed the suit. He submitted that the Appellate Court decreed the suit only under Section 15 of the Act and declined to pass the decree under the ground of reasonable and bonafide requirement as contemplated by Section 16(1)(g) of the Act. He submitted that basically the Appellate Court was not justified in decreeing the suit as the plaintiff did not come to the Court with clean hands. The plaintiff had suppressed several material facts. Though the plaintiff claimed possession by invoking the ground under Section 16(1)(g) of the Act, he suppressed that he has several premises.

4. Mr. Kenjale further submitted that defendant No.1 is a rickshaw driver and is not aware of the necessities of law. He was not properly advised by his Advocate in the Appellate Court. In fact in paragraph-31, the Appellate Court recorded that after service of suit summons, the deceased defendant took out Interim Notice No.897/2004 on 12.2.2004 and sought permission to deposit entire arrears of rent from 1.5.1997 till 10.12.2005 along with 15% interest and costs and future monthly rent till disposal of the suit. Said application was allowed on 18.11.2005 and the defendant was directed to deposit the entire arrears on or before 7.12.2005. The Appellate Court noted that there was no dispute that the defendant has deposited said amount within said time. Mr. Kenjale, therefore, submitted that the defendant cannot be termed as a willful defaulter so as to justify passing the decree under Section 15 of the Act.

5. Mr. Kenjale submitted that the fact that the defendant was not properly advised is borne out from Civil Application No.403/2017 taken out by the defendants for permitting deposit of the amount of rent for the period from August, 2010 till June, 2012 along with interest @ 15% per annum with costs. He, therefore, submitted that the application requires consideration.

6. I have considered the submissions of Mr. Kenjale. I have also

perused the material on record. Mr. Kenjale submitted that though the plaintiff has several premises, still he invoked the ground under Section 16(1)(g) of the Act. Thus, the plaintiff did not approach the Court with clean hands. I do not find any merit in this submission. As noted earlier, both the Courts declined to pass the decree under Section 16(1)(g) of the Act. The Appellate Court decreed the suit only under Section 15 of the Act. Insofar as ground under Section 15 of the Act is concerned, the Appellate Court has considered this aspect from paragraphs-25 to 36. In paragraph-32, the Appellate Court noted that after verifying the record, the defendant had first deposited the entire arrears of rent on 7.12.2015. The defendant thereafter did not deposit any amount till 30.6.2009. On 30.6.2009, he took out another application Exhibit-27. In that application, the defendant admitted that he did not deposit the monthly rent regularly and sought permission to deposit the entire arrears of amount from January, 2006 to July, 2009. Thus the defendant was in arrears of rent for more than three and half years during pendency of the Suit. Said application was allowed and the defendant was permitted to deposit said arrears in the Court. The defendant thereafter deposited the rent from time to time till July, 2010. The suit was dismissed on 27.2.2012. From the ledger entries, it was evident that the defendant was in arrears of rent from July, 2010 to

February, 2012 for a period of two years. Thus even on the date of decision of the suit, the defendant did not clear all the arrears of rent.

7. In paragraph-33, the Appellate Court noted that even during pendency of the appeal, the defendant continued to be in arrears of rent. He took out application Exhibit-13 for permission to deposit the arrears of rent from July, 2012 till February, 2017. That application was allowed and the defendant deposited said arrears of rent. The Appellate Court further observed that at the time of deciding the appeal, the defendants have not deposited the arrears of rent for the period from August, 2010 till June, 2012.

8. For the reasons recorded in paragraphs-32 and 33 of the Appellate Court's decision, I do not find that the Appellate Court committed any error in decreeing the suit under Section 15 of the Act. Even in Civil Application No.403/2017, the defendants have prayed for permission to deposit the arrears of rent for the period from August, 2010 till June, 2012 along with interest @ 15% per annum with costs. Hence no case is made out for invocation of powers under Section 115 of C.P.C.

9. The defendants were not in a position 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 on record. The defendants were also not in a position to demonstrate that no reasonable

person would have arrived at the conclusions other than arrived by the Appellate Court. Hence, no case is made out for invocation of powers under Section 115 of C.P.C. Civil Revision Application fails and the same is dismissed with no order as to costs. In view of dismissal of C.R.A., Civil Application No.403/2017 does not survive and the same is disposed of. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)