

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL REVISION APPLICATION [STAMP] NO.18973 OF 2018
WITH
CIVIL APPLICARTION [STAMP] NO.18975 OF 2018

Tarachand Visanji Shah] Applicant

Vs.

Mahesh Gajanan Karmarkar] Respondent

.....

Ms. Monika Jagtap a/w Latesh Fariya i/b Solicis Lex, for Applicant.

Mr. Vijay Patil a/w Mr. Nikhil Chavan a/w Mr. Yogesh Patil, for Respondent.

.....

CORAM : R.G. KETKAR, J.

DATE : 6th AUGUST, 2018.

P.C.

Heard Ms. Jagtap, learned Counsel for the applicant and Mr. Patil, 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'), the applicant, hereinafter referred to as 'defendant' has challenged the judgment and decree dated 9th March, 2017 passed by the learned 7th Additional Judge, Small Causes Court, Pune as also the judgment and decree dated 4th May, 2018 passed by the learned District Judge-7, Pune in Civil Appeal No.257 of 2017. By these orders, the Courts below decreed the suit instituted by the respondent, hereinafter referred to as 'plaintiff' under section 16 (1) (g) of the Maharashtra Rent Control Act, 1999 (for short 'Act') and directed the defendant to hand over possession of Block No.2 comprising of 4 Rooms, admeasuring 700 square feet along with varandah situate on the ground floor of the bungalow known as "Sugam",

more particularly described in paragraph 1(b) of the plaint within two months from the date of the decree.

3. In support of this application, Ms. Jagtap strenuously contended that the Courts below have committed serious error in decreeing the suit under section 16 (1) (g) of the Act. She submitted that a perusal of trial Court's judgment would indicate that though the learned trial Judge framed issue No.1-A on the question of comparative hardship, no finding was recorded. She submitted that the requirement pleaded by the plaintiff is neither reasonable nor bona fide. It has come on record that in all there are 16 rooms in bungalow "Sugam" in Block No.61/A/21 situate at CTS No.107/24 Erandwana, Pune. In all, there are 4 blocks comprising of 4 rooms each and that the defendant is in possession of one block comprising of 4 rooms. The plaintiff is in possession of 3 blocks comprising of 12 rooms. It has come on record that during pendency of the proceeding, plaintiff's mother was expired, therefore, need of the plaintiff is that of his wife and two sons. Having regard to the premises in their possession namely 3 blocks comprising of 12 rooms, need of the plaintiff is neither reasonable nor bona fide. As against this, financial condition of the defendant is not sound. She submitted that the defendant has retired and has no source of income. The Courts below, however, proceeded on the premise that financial condition of the defendant is sound and that he is having two four wheeler, one MH-12-LV 1239 (Maruti Swift VXi) and TATA Indigo Manza MH-12-FU 6618 which are luxurious cars. She submitted that by no stretch of imagination, these cars can be said to be luxurious cars. In any case, the cars belong to defendant's son.

4. Ms. Jagtap has taken me through the impugned orders as also application filed by the defendant at Exhibit 27 in Civil Appeal No.257 of 2017 under Order-XLI, Rule-27 of the C.P.C for adducing additional evidence for

bringing on record the fact of the plaintiff inducting Maharashtra Natural Gas Limited (for short 'MNGL') in Block No.1 after trial Court passing the eviction decree. She submitted that on 21st December, 2017, the learned District Judge passed following order;

“This application will be decided alongwith main appeal”

Though the learned District Judge passed order to that effect on 21st December, 2017, while deciding the appeal finally, the learned District Judge did not decide the application. She submitted that as the plaintiff did not establish bona fide requirement, the Courts below were not justified in decreeing the suit. She further submitted that the Courts below failed to appreciate that need pleaded by the plaintiff was not in presenti but of future requirement.

5. In support of her submission, she relied on following judgments;

[1] **Gulabbai Vs. Nalin Narsi Vohra, Vs, AIR 1991 Supreme Court, 1760** to contend that the words “reasonable requirement” undoubtedly postulate that there must be an element of need, desire or wish. While considering the case of bona fide requirement, distinction between “desire” and “need” should doubtless be kept in mind but not so as to make even the genuine need as nothing that a desire.

[2] **Deepak Gupta Vs. Sushma Aggarwal, 202 (2013) Delhi Law Times 121** to contend that bona fide requirement must be in praesenti and not of future.

6. Ms. Jagtap submitted that as the learned District Judge did not decide application under Order-XLI, Rule-27, impugned order passed by the learned District Judge needs to be set aside by remitting the appeal to the District Court and deciding it afresh along with application Exhibit 27. In support of this submission, she relied on following decisions;

[1]**Namdeo S/o Bapurao Bansod Vs. Tukaram S/o Marotrao Jadhav, CDJ 2008 SC 1487** to contend that whenever application under Order-XLI, Rule-27 is made and the additional evidence is allowed to be produced by the Appellate Court, the Appellate Court should record reasons for its admission. The first Appellate Court ought to have passed an order in respect of the application under Order-XLI, Rule-27 of C.P.C either allowing or rejecting the application. The High Court, therefore, ought to have interfered in the matter by raising an appropriate question of law. She, therefore, submitted that the impugned order passed by the learned District Judge be set aside thereby, remitting the matter to the District Court.

[2]**Malaylam Plantations Ltd Vs State of Kerla & Another, 2010 (13) SCC 487**, and in particular paragraphs 10 and 11 to contend that when an application under Order-XLI, Rule-27 is filed, it is the duty of the Appellate court to decide the same on merits.

7. On the other hand, Mr. Patil supported the impugned orders. He submitted that after appreciating the evidence on record, the Courts below have concurrently decreed the suit under section 16 (1) (g) of the Act. He submitted that by order dated 7th June, 2017 passed by this Court in Writ Petition No.5643 of 2017, the learned District Judge was requested to dispose of the appeal as expeditiously as possible, preferably within six months from the date of the order. Instead of proceeding with hearing of the appeal, the defendant filed application Exhibit 27 on 12th December, 2017 under Order-XLI, Rule-27 of the C.P.C for adducing additional evidence. He invited my attention to the reply filed by the plaintiff on 21st December, 2017 and in particular paragraphs 4 to 6 thereof. Instead of proceeding with hearing of the appeal, the defendant made application for adjournment. By order dated 19th January, 2018, the learned District Judge granted last chance. Application for

adjournment was made by the defendant on 12th February, 2018. By order dated 12th February, 2018, subject to imposing costs of Rs.1,000/-, the learned District Judge granted adjournment. In short, he submitted that though the learned District Judge was supposed to dispose of the appeal within six months as per this Court's order dated 7th June, 2017, the defendant was instrumental in causing delay in disposing of the appeal. He submitted that the defendant had filed pursis dated 6th March, 2018 at Exhibit 35 along with list of documents at Exhibit 36. The defendant relied on;

[1] On-line track report sent to MGNL.

[2] Returned envelope sent to MGNL.

8. Mr. Patil submitted that basically the defendant wanted to buy the suit premises on ownership basis and as the plaintiff did not accede to his request, he is not ready and willing to vacate the suit premises despite offering him alternate premises. He, therefore, submitted that no case is made out for interfering with the impugned orders.

9. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. As noted earlier, the Courts below have decreed the suit only under section 16 (1) (g) of the Act. A perusal of the plaint and in particular paragraph 7 shows that the plaintiff asserted that at present he is in possession of 3 blocks and along with his wife, two sons and ailing mother is occupying the structure. It is common ground between the parties that during pendency of the proceedings, mother of the plaintiff has expired and, therefore, her need does not survive. In paragraph 8, it is asserted that plaintiff's wife met with a severe accident and has suffered a major brain injury. Having regard to her health condition, a bedroom is required for her and her private servant/assistant to look after her health. In paragraph 9, it is asserted that the plaintiff has obtained B.E. degree

in Mechanical Engineering. He is consultant by profession. The plaintiff is using one block situate on the ground floor as his Office for providing consultancy services. The plaintiff's both sons are growing and require separate rooms. In coming years, the plaintiff's elder son will become graduate and he plans to start his own software consultancy office. In couple of years, the elder son will establish his and/or start his independent and new life as a separate and new unit. He will, therefore, require a separate block for his residence and practicing his profession. In paragraph 10, the plaintiff asserted that premises in his possession are insufficient for satisfying the present as well as future growing needs of the plaintiff and his family members. In paragraph 12, the plaintiff asserted that the defendant owns and possesses several properties and also owns two luxurious Chauffer driven cars viz; Maruti Swift VXi having registration No.MH-12-LV 1239 and Tata Manza having registration No. MH-12-FU 6618. Defendant's one son Kerul is residing in United States of America and other son Dhaval is a foreign returned. Dhaval was earlier working in a reputed company and currently is carrying on his own business. In short, the plaintiff asserted that sons of the defendant are doing well in their respective fields and are economically sound. Defendant and his wife often go and stay with elder son and daughter Dipti in U.S.A.

10. The defendant resisted the suit by filing written statement. He denied all the adverse contentions. The defendant contended that the suit is instituted only to harass the defendant and his family members and disturbing their mental peace. The plaintiff is having ample, sufficient and suitable premises of which he is in actual possession that will cater need of the plaintiff and his family members. On the other hand, the defendant along with his family members is in possession of 700 square feet. The plaintiff possesses 2100 square feet. The defendant further contended that his financial condition is not so good and has no capacity to purchase new flat in the same locality out

of funds from his pocket. Due to his old age, he is not in condition to avail housing loan from any financial institution. The defendant further contended that father of the plaintiff had taken hand loan of Rs. 8,500/- from Kantilal Visanji Shah (eldest brother of the defendant) on 25th March, 1965 and he agreed to repay the same in installments. Father of the plaintiff assured that he will transfer rented premises i.e suit premises on ownership basis in favour of the brother of the defendant and after his demise, assured the defendant to transfer the suit premises in his favour on ownership basis. In short, till demise of father of the defendant, the plaintiff only gave assurances about transfer of rented premises on ownership basis in favour of brother of the defendant and thereafter in favour of the defendant but he could not get prior permission of the Society for transferring the suit premises on ownership basis. The defendant further contended that as he retired from the business, he has no source of income. One of the sons of the defendant Dhaval is looking for job and has no fixed source of income. Granddaughter of the defendant is studying in 6th standard. For all these reasons, the defendant resisted the suit.

11. On the basis of the pleadings of the parties, the learned trial Judge framed necessary issues. The parties adduced evidence in support of their case. After considering the evidence on record, the Courts below decreed the suit as indicated hereinabove. It is against these orders, the defendant has instituted present C.R.A.

12. A perusal of the record indicates that the Courts below have considered requirement of the plaintiff as also question of comparative hardship. Ms. Jagtap submitted that though the learned trial Judge framed issue No.1-A in respect of comparative hardship, no finding, however, was recorded by the learned trial Judge. I do not find any merit in this submission. A perusal of the trial Court's order and in particular paragraphs 27,28,29,34,36

and 38 clearly shows that the learned trial Judge has considered issue of comparative hardship. In paragraph 27, the learned trial Judge referred to the question put to the defendant that the plaintiff is ready to make available alternate accommodation to him. The defendant did not show willingness to vacate the suit premises. In paragraph 28, the learned trial Judge considered financial position of the defendant and observed that financial condition of the defendant is sound. Defendant admitted that the plaintiff cannot use Sugam bungalow unless possession of the suit premises is handed over to him. In paragraph 34, the learned trial Judge considered various circumstances and observed that defendant and his wife often go and stay with their elder son in U.S.A for considerable period and without any need are occupying the suit premises. In paragraph 36, the learned trial Judge observed that the defendant is having visa for the period of 10 years. His financial condition is sound. Defendant can get alternate accommodation if the suit is decreed. The learned trial Judge further observed that after the defendant received legal notice demanding possession, it was his duty to search for alternate accommodation.

13. In so far as the learned District Court is concerned, the learned District Judge has re-appreciated the entire evidence on record. The learned District Judge also considered financial condition of the defendant. After considering the evidence on record from paragraphs 17 onwards, the learned District Judge considered the ground of bona fide requirement and in paragraph 24 concluded that the premises in possession of the plaintiff for consultancy is insufficient and as he wants to expand his business, he requires the suit premises for expansion and there is nothing amiss in this requirement.

14. In paragraph 25, the learned District Judge noted that the defendant in cross-examination was offered alternate premises which in fact he refused. In paragraph 26, the learned District Judge concluded that the

plaintiff has succeeded in establishing the ground under section 16 (1) (g) of the Act. The question of comparative hardship is considered in paragraph 27 and the learned District Judge held that greater hardship will be caused to the plaintiff in case eviction decree is refused. Thus, the Courts below concurrently held that the requirement of the plaintiff is both reasonable and bona fide and that greater hardship will be caused to the plaintiff if eviction decree is refused.

15. Ms. Jagtap submitted that during pendency of the appeal, the defendant preferred application Exhibit 27 on 12th December, 2017 under Order-XLI, Rule-27 for adducing additional evidence and on that application, order was passed on 21st December, 2017 to the effect that the application will be decided along with the appeal. The learned District Judge, however, did not decide the application for adducing additional evidence and, therefore, the matter requires to be remitted to the District Court for deciding afresh. A perusal of the application shows that in paragraph 5, the defendant contended that the plaintiff had inducted MNGL in block No.1 after eviction decree was passed by the trial Court. In paragraph 6, it is contended that the defendant came to know of this fact soon after passing of the eviction decree by the trial Court as MNGL has put their board and started operating from Block No.1. In paragraph 7, it is contended that the plaintiff had renovated a single room on the ground floor and the same is being used by his children for studying and other purpose. During the course of hearing, Ms. Jagtap submitted that reference to Room on the ground floor is to a garage which is in plot where the suit premises is situate.

16. The plaintiff had filed reply at Exhibit 28 on 21st December, 2017 opposing the application at Exhibit 27. In paragraph 4, the plaintiff specifically denied that in Block No.1 MNGL was inducted as alleged. The plaintiff contended that Block No.1 is not let out in favour of any third person including

so-called MNGL and that he is personally using the said premises. In paragraph 5, the plaintiff denied that Block No.1 is given to MNGL as alleged and contended the application is made only to prolong hearing of the appeal. The contentions raised in paragraph 7 of the application about renovation of the premises were also denied. The defendant did not file rejoinder.

17. The defendant has prayed for permitting him to lead additional evidence on the above facts. It is material to note that in order to substantiate this application, the defendant did not produce a single document, more so, when the defendant came with the case that Block No.1 was given to MNGL. It is material to note that the defendant is residing in Block No.2 which is the suit premises and despite that, the defendant did not come with the case that he made inquiries from the occupiers of Block No.1 and came to know that said Block No.1 is occupied by MNGL. Not only that, the defendant did not disclose name and designation of the In-charge of MNGL Limited. As mentioned earlier, the defendant filed pursis at Exhibit 35 before the District Court on 6th March, 2018 enclosing therewith list of documents at Exhibit 36. Along with list of documents, the defendant filed;

[1] On-line track report sent to MGNL.

[2] Returned envelope sent to MGNL

It is inconceivable that documents sent to a public body will be returned 'unclaimed'. Moreover, the defendant did not bring any documentary evidence on record to substantiate plea that the plaintiff inducted MGNL in Block No.1. In other words, application at Exhibit 27 filed by the defendant on 12th December, 2017 under Order-XLI, Rule-27 was bereft of any particulars as also the defendant did not bring any cogent material to substantiate the said case.

18. A perusal of the application made by the defendant clearly shows that it does not fall either in clause (a) or clause (b) of Order-XLI, Rule-27 (1).

In other words, the application essentially falls under Order-XLI, Rule-27 (1) (aa). Before I consider merits of the application, it is necessary to make reference to the decision of the Apex Court in the case of **P. Purushottam Reddy and another Vs. Pratap Steels Ltd (2002) 2 Supreme Court Cases 689** and in particular paragraph 10 thereof which is to the following effect;

“10.The next question to be examined is the legality and propriety of the order of remand made by the High Court. Prior to the insertion of Rule 23A in Order 41 of the Code of Civil Procedure by CPC Amendment Act 1976, there were only two provisions contemplating remand by a Court of appeal in Order 41 of CPC. Rule 23 applies when the trial court disposes of the entire suit by recording its findings on a preliminary issue without deciding other issues and the finding on preliminary issue is reversed in appeal. Rule 25 applies when the appellate court notices an omission on the part of the trial court to frame or try any issue or to determine any question of fact which in the opinion of the appellate court was essential to the right decision of the suit upon the merits. However, the remand contemplated by Rule 25 is a limited remand inasmuch as the subordinate court can try only such issues as are referred to it for trial and having done so the evidence recorded together with findings and reasons therefore of the trial court, are required to be returned to the appellate court. However, still it was a settled position of law before 1976 Amendment that the court, in an appropriate case could exercise its inherent jurisdiction under section 151 the CPC to order a remand if such a remand was considered pre-eminently necessary *ex debito justitiae*, though not covered by any specific provision of Order 11 of the CPC. In cases where additional evidence is required to be taken in the event of any one of the clause of Sub-rule (1) of Rule 27 being attracted such additional evidence oral or documentary, is allowed to be produced either before the appellate court itself or by directing any court subordinate to the appellate court to receive such evidence and send it to the appellate court. In 1976, Rule 23A has been inserted in Order 41 which provides for a remand by an appellate court hearing an appeal against a decree if (i) the trial court disposed of the case otherwise than on a preliminary point, and (ii) the decree is reversed in

appeal and a retrial is considered necessary. On twin conditions being satisfied, the appellate court can exercise the same power of remand under Rule 23A as it is under Rule 23. After the amendment all the cases of wholesale remand are covered by Rule 23 and 23A. In view of the express provisions of these rules, the High Court cannot have recourse to its inherent powers to make a remand because as held in *Mahendra Manilal Nanavati v. Sushila Mahendra Nanavati*, AIR 1965 SC 364, it is well settled that inherent powers can be availed of *ex debito justitiae* only in the absence of express provisions in the Code. It is only in exceptional cases where the Court may now exercise the power of remand dehors the Rules 23 and 23A. To wit, the superior court, if it finds that the judgment under appeal has not disposed of the case satisfactorily in the manner required by Order 20 Rule 3 of Order 11 Rule 31 of the CPC and hence it is no judgment in the eye of law, it may set aside the same and send the matter back for re-writing the judgment so as to protect valuable rights of the parties. An appellate court should be circumspect in ordering a remand when the case is not covered either by Rule 23 or Rule 23A or Rule 25 of the CPC. An unwarranted order of remand gives the litigation an undeserved lease of life and, therefore, must be avoided”.

19. A perusal of paragraph 10 extracted hereinabove shows that the Apex Court observed that an unwarranted order of remand gives the litigation an undeserved lease of life and, therefore, must be avoided. Applying the tests laid down in Reddy's case, it is necessary to find out whether the defendant has made out a case for remitting the matter to the District Court solely on the ground that the District Judge not decided application under Order-XLI, Rule-27 of C.P.C. I have already made reference to the contents of the application and that despite the plaintiff denying the assertions made in that application, the defendant did not bother to bring any documentary evidence on record to substantiate his plea that Block No.1 was given to MNGL which is a public body.

20. As noted earlier, the application falls under Order-XLI, Rule-27 (1)
 (aa). Order-XLI, Rule-27 reads thus;

27. Production of additional evidence in Appellate Court._

(1)The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court, But if_

(a)..

[(aa)the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]

A perusal of clause (aa) shows that a party is not entitled to produce additional evidence unless it establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence be produced by him at the time when the decree appealed against was passed. It is therefore, necessary for the party seeking to produce additional evidence to establish that notwithstanding exercising due diligence such evidence was not within his knowledge. In order to establish this case, it is for the party seeking to produce additional evidence to invite attention of the Appellate Court to pendency of such application and also request the Appellate Court to decide such application. Such party cannot sit as a mute spectator and allow the Appellate Court to decide the appeal without pointing out pendency of such application. The defendant is the beneficiary of such application. It is for the defendant to request the District Court to decide the application and the defendant cannot sit on fence and allow the District Court to decide appeal without pointing out pendency of such application. By failing to do so is also one of the circumstances showing lack of due diligence on the part of the defendant. It is, therefore, not permissible for the defendant not to turn around in this Court and complain about the District Court not deciding the application for adducing additional evidence.

21. The question is whether the defendant has made out a case for production of additional evidence. In the case of **Union of India v. Ibrahim and another, (2012) 8 SCC 148**, the Apex Court has exhaustively dealt with the provisions of Order XLI Rule 27 of C.P.C from paragraphs 36 to 51. In paragraph 36, it was observed that the general principle is that the appellate Court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order XLI, Rule 27 Code of Civil Procedure enables the Appellate Court to take additional evidence in exceptional circumstances. The Appellate Court may permit additional evidence only and only if the conditions laid down in this rule are found to exist. The parties are not entitled, as of right, to the admission of such evidence. Thus, provisions does not apply, when on the basis of evidence on record, the Appellate Court can pronounce a satisfactory judgment. The matter is entirely within the discretion of the court and is to be used sparingly. Such a discretion is only a judicial discretion circumscribed by the limitation specified in the Rule itself.

22. In paragraph-38, it was observed that Order XLI, Rule 27 does not entitle the Appellate Court to let in fresh evidence at the appellate stage where even without such evidence, it can pronounce judgment in a case. In paragraph-39, it was observed that it is not the business of the Appellate Court to supplement the evidence adduced by one party or the other in the lower Court. In the absence of satisfactory reasons for the non-production of the evidence in the trial court, additional evidence should not be admitted in appeal as a party guilty of remissness in the lower court is not entitled to the indulgence of being allowed to give further evidence under this rule. In paragraph-41, it was observed that the words “for any other substantial cause” must be read with the word “requires” in the beginning of sentence, so that it is only where, for any other substantial cause, the Appellate Court requires

additional evidence that this rule will apply, e.g., when evidence has been taken by the lower Court so imperfectly that the Appellate Court cannot pass a satisfactory judgment. Apex Court held that an application for taking additional evidence has to be considered with circumspection, provided it is covered under either pre-requisite conditions incorporated in the statutory provisions itself. The discretion is to be exercised by the court judicially taking into consideration the relevance of the document in respect of the issues involved in the case and the circumstances under which such an evidence could not be led in the court below and as to whether the applicant had prosecuted his case before the court below diligently and as to whether such evidence is required to pronounce the judgment by the appellate court. The power so conferred upon the Court by the Code ought to be very sparingly exercised and one requirement at least of any new evidence to be adduced should be that it should have a direct and important bearing on a main issue in the case.

23. Applying the tests laid down by the Apex Court and considering the averments made in the application Exhibit 27, I am of the firm opinion that no case is made out for adducing additional evidence. As held in the case of **P. Purshottam Reddy** (supra), Appellate Court should be circumspect in ordering the remand and an unwarranted order of remand gives the litigation an undeserved lease of life and, therefore, must be avoided.

24. The Courts below after appreciating the evidence on record have concurrently decreed the suit under section 16 (1) (g) of the Act. Ms. Jagtap relied on the decision in the case of **Gulabbai** (supra), where the Apex Court held that words “reasonable requirement” undoubtedly postulate that there must be an element of need, desire or wish. The distinction must be made between desire and need. There is no dispute with the proposition laid down

by the Apex Court. She also relied on the decision of Delhi High Court in the case of **Deepak Gupta** (supra) to contend that bona fide need must be in praesenti. The plaintiff has pleaded both requirements in presenti as also in future. In so far as decision in the case of **Namdeo s/o Bapurao Bansod** (supra) is concerned, there is no dispute with the proposition that while allowing the application under Order-XLI, Rule-27, the Court has to record reasons for its admission. In the case of **Malayalam Plantations Ltd.** (supra) request was made before the Apex Court to scrutinize each and every document. The Apex Court declined to go into validity or acceptability of those documents/material.

25. At the cost of repetition, the defendant did not produce any document/material alongwith the application. In paragraph 5, bald statements are made without any foundation. During the course of hearing, Ms. Jagtap tendered affidavits dated 30th July, 2018 made by Dr. Mukund Joshi and Mrs. Chadrika Dinesh Shah. They have stated that MNGL branch is operating from Sugam Bungalow and that they have booked a gas pipeline connection with MNGL. A perusal of paragraph 7 of the affidavit of Mrs. Chandrika Shah shows that MGNL has shut down the branch. That apart, the defendant cannot produce affidavits for the first time during the course of arguments. Even otherwise, as per section 1 of the Indian Evidence Act, 1872, the said Act does not apply to the affidavits presented to any Court. I, therefore, do not find any merit in the submission of Ms. Jagtap. In my opinion, the decisions relied on by Ms. Jagtap do not advance case of the defendant.

26. Thus, after considering the material on record, I do not find that the Courts below committed error in decreeing the suit under section 16 (1) (g) of the Act. The defendant is not in a position to demonstrate that the findings recorded by the Courts below are perverse being based on no evidence

or that on the basis of material on record, no reasonable or prudent person would have come to the conclusion arrived at by the Courts below. Merely because on the basis of the material on record, another view is possible that, by itself, is no ground for exercising the powers under section 115 of C.P.C. In the result, the Civil Revision Application fails and the same is dismissed.

27. In view of dismissal of C.R.A, C.A. (ST) No.18975 of 2018 for stay of eviction decree passed by the Courts below does not survive and as such is disposed of.

28. At this stage, Ms. Jagtap orally applies for permission to deposit arrears of rent as per the order dated 6th July, 2018 on or before latest Friday, i.e 10th August, 2018. The defendant shall deposit an amount of Rs. 75,000/- in this Court in this Court on or before 10th August, 2018, under intimation in writing to the plaintiff's Advocate. The plaintiff is permitted to withdraw the amount deposited by the defendant in this Court as also the District Court unconditionally.

29. All the parties to act upon an authenticated copy of this order.

[R.G. KETKAR, J.]