

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION (ST.) NO.19338 OF 2018
WITH
CIVIL REVISION APPLICATION (ST.) NO.19340 OF 2018

The State of Maharashtra and another ... Applicants
Vs.
M/s. Kukreja Construction Co. ... Respondent

Mr. A. R. Patil, Additional G.P. for Applicants.
Mr. P. S. Dani, Senior Advocate i/b. Mr. S. R. Bhalekar for Respondent.

CORAM : R. G. KETKAR, J.
DATE : SEPTEMBER 3, 2018

P.C. :

Heard Mr. Patil, learned Additional G.P. for the applicants and
Mr. Dani, learned Senior Counsel for the respondent at length.

2. These Civil Revision Applications instituted by the applicants
under Section 115 of the Code of Civil Procedure, 1908 (for short
'C.P.C.') take exception to the judgment and decree dated 13.10.2017
passed by the Appellate Bench of the Small Causes Court at Bombay in-

- (i) (2A) Appeal No.232 of 2014 and
- (ii) (2A) Appeal No.231 of 2014.

3. Appeal No.232 of 2014 was instituted by the respondent,
hereinafter referred to as 'plaintiff', challenging the judgment and decree
dated 26.04.2013 passed by the learned trial Judge dismissing R.A.E.&
R. Suit No.289/446 of 2007. The Appellate Court allowed the appeal
preferred by the plaintiff on 13.10.2017 and set aside the trial Court's
order. The Appellate Court decreed R.A.E.& R. Suit No.289/446 of
2007 and directed the applicants, hereinafter referred to as 'defendants',
to handover possession of flat on the Western side of the ground floor of
building situate in CTS No.1462, 1462/1 and 1462/2 situate on Plot

No.542 at 11th Road, Chembur, Mumbai 400 071 (for short 'suit premises') along with garage.

4. Appeal No.231 of 2014 was instituted by the respondent, hereinafter referred to as 'plaintiff', challenging the judgment and decree dated 26.04.2013 passed by the learned trial Judge dismissing R.A.E.& R. Suit No.290/447 of 2007. The Appellate Court allowed the appeal preferred by the plaintiff on 13.10.2017 and set aside the trial Court's order. The Appellate Court decreed R.A.E.& R. Suit No.290/447 of 2007 and directed the applicants, hereinafter referred to as 'defendants', to handover possession of flat on the Eastern side of the ground floor of building situate in CTS No.1462, 1462/1 and 1462/2 situate on Plot No.542 at 11th Road, Chembur, Mumbai 400 071. As the common questions of facts and law arise in these Applications, the same can conveniently be disposed of by this common order. In order to appreciate the controversy between the parties, facts from C.R.A.(St.) No.19338 of 2018 are taken into consideration.

5. In support of this Application, Mr. Patil strenuously contended that the Appellate Court was not justified in reversing the trial Court's decree thereby decreeing the Suit filed by the plaintiff. He has invited my attention to the findings recorded by the learned trial Judge in paragraph 33. The learned trial Judge, after considering the evidence on record, dismissed the Suit. The learned trial Judge found that the notice of demand dated 12.04.2004 at exhibit-19 was not a valid notice. Notice did not stipulate any period during which the defendants were to comply the said notice. As no period was mentioned in the said notice, the Suit invoking ground under Section 15 of the Maharashtra Rent Control Act, 1999 (for short 'Act') must fail.

6. Mr. Patil has invited my attention to the findings recorded by the Appellate Court from paragraph 31 onwards. He submitted that the

Appellate Court failed to appreciate that the rent demanded by the plaintiff was exaggerated. The plaintiff did not furnish the details to show that how the amount of rent was increased and plaintiff claimed rent @ Rs.231/- per month, each, in respect of the flats in question. He, therefore, submitted that applications require consideration.

7. On the other hand, Mr. Dani supported the impugned orders and submitted that the findings recorded by the learned trial Judge in paragraph 33 are contrary to Section 15 of the Act. The Appellate Court has considered the fact that defendants' witness - Narayansingh Pawar during his cross-examination at exhibit-24 admitted that defendants were paying rent @ Rs.231/- per month. Even Deed of Conveyance at exhibit-22 and the notice of demand at exhibit-19 also show that Rs.231/- was the rent fixed in respect of each flat, and accordingly, demand was raised. He, therefore, submitted that as the defendants did not comply Section 15 of the Act, the Appellate Court was justified in passing the impugned orders.

8. 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 record indicates that plaintiff claims possession only by invoking ground under Section 15 of the Act. Section 15 of the Act reads thus,

“15. No ejectment ordinarily to be made if tenant pays or is ready and willing to pay standard rent and permitted increases.- (1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of this Act.

(2) No suit for recovery of possession shall be instituted by a landlord against the tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of ninety days next after notice in writing of the demand of the standard rent or permitted increase has been

served upon the tenant in the manner provided in section 106 of the Transfer of Property Act, 1882 (IV of 1882).

(3) No decree of eviction shall be passed by the court in any suit for recovery of possession on the ground of arrears of standard rent and permitted increases if, within a period of ninety days from the date of service of the summons of the suit, the tenant pays or tenders in court the standard rent and permitted increases then due together with simple interest on the amount of arrears at fifteen per cent per annum; and thereafter continues to pay or tenders in court regularly such standard rent and permitted increases till the suit is finally decided and also pays cost of the suit as directed by the court.

(4) Pending the disposal of any suit, the court may, out of any amount paid or tendered by the tenant, pay to the landlord such amount towards the payment of rent or permitted increases due to him as the court thinks fit.”

9. It is evident from record that plaintiff had issued demand notice dated 12.04.2004 at exhibit-19 which was duly served on the defendants. By that notice, plaintiff claimed rent of Rs.231/- per month, each, in respect of two flats. While dismissing the Suit, the learned trial Judge observed in paragraph 33 thus,

“33. As I already pointed out the notice of demand dtd. 12.04.2004 is not disputed to be served upon the defendants or received by them. However, Ex.19 copy of notice shows that vide the said notice the defendants were conveyed that it was a notice under section 80 of C.P.C. as well as the rent was demanded at the rate of Rs.231/- p.m. **It is very pertinent to note that the notice Ex.19 does not stipulate any period during which the defendants have to comply said notice.** There is no period at all mentioned in said notice till when the defendants had to comply the demand. As observed by Hon'ble Apex Court in case of *Dhanpal Chettiar V. Yesodai Ammal*, (1979) 4 SCC 214, the notice has to be complied within stipulated period. I, therefore, answer issue No.3 in the negative.

(emphasis supplied)”

10. As against this, from paragraph 31 onwards, the Appellate Court, after considering the evidence on record, held that after receipt of the demand notice exhibit-19, defendants did not pay any amount towards the arrears of rent. D.W.1 examined by defendants admitted that Deed of

Conveyance and the notice of attornment were duly received by them by making acknowledgment to that effect at exhibit-19. In paragraph 32, the Appellate Court considered the submission of the defendants that 12rent of Rs.231/- per month is exaggerated and no details were furnished by the plaintiff to show how amount of rent was increased and therefore, the notice of demand was invalid. After considering the admission of defendants' witness Narayan Devsingh Pawar and the Deed of Conveyance at exhibit-22 and demand notice at exhibit-19, the Appellate Court concluded that plaintiff did not demand exaggerated rent and the rent in respect of each flat was Rs.231/- per month. The defendants did not dispute the service of demand notice and also did not file any application for fixation of standard rent. As the defendants failed to comply notice under Section 15, I do not find that the Appellate Court committed any error in passing the impugned order. In paragraph 41, the Appellate Court referred to the finding recorded by the learned trial Judge in paragraph 33 and held that the said finding was erroneous.

11. In the light of the aforesaid discussion, I do not find that the Appellate Court committed any error in passing the impugned orders. 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. 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. Merely because on the evidence on record, another view is possible, that itself is no ground for invocation of powers under Section 115 of the C.P.C. Hence, Applications fail and the same are dismissed.

12. At this stage, Mr. Patil orally applies for stay of eviction decree for a period of 8 weeks from today. He assures that defendants will not

apply for further extension of time. Mr. Patil states that within two weeks from today, defendants will file usual undertaking in this Court 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 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) they will pay arrears of rent, if any, to the plaintiff within two weeks from today.
- (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 plaintiff;

13. In view thereof, notwithstanding dismissal of the Applications, subject to the defendants filing undertaking in the aforesaid terms with advance copy to the other side, as also clearing arrears of rent, if any, within two weeks from today, the eviction decree shall not be executed for a period of 8 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 defendants commit breach of any of the conditions of the undertaking, eviction decree shall stand vacated without further reference to the Court. 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 plaintiff, the plaintiff will be at liberty to execute the decree in accordance with law. Order accordingly.

14. List the Applications for 'reporting compliance' on 25.09.2018 at 3.00 p.m.

(R. G. KETKAR, J.)