

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL REVISION APPLICATION [ST] NO.19418 OF 2018

Rajani Ramakant Phulare	]	Petitioner
Vs.		
Chandrashekhar Somkant Randive	]	Respondent

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Ms. Ronita Bhattacharya, for Petitioner.
Ms. Anusha Pravin Amin, for Respondent.

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CORAM : R.G. KETKAR, J.

DATE : 30TH JULY, 2018.

P.C:

Heard Ms. Bhattacharya, learned Counsel for the petitioner and Ms. Amin, 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 July, 2009 passed by the learned Civil Judge, Junior Division, Murud-Janjira, District Raigad in Regular Civil Suit No.24 of 2007 as also the judgment and decree dated 7th February, 2018 passed by the learned Ad-hoc District Judge-I, Raigad, Alibaug in Civil Appeal No.122 of 2009. By these orders, the Courts below decreed the suit instituted by the respondent, hereinafter referred to as "plaintiff" under sections 16 (1) (b), 16 (1) (g) and 16 (1) (a) of the Maharashtra Rent Control Act, 1999 (for short 'Act') r/w section 108 (o) of the Transfer of Property Act, 1882 (for short 'T.P. Act'). The Courts below directed the defendant to hand over possession of House Property No. 105 within the limits of Murud Municipal Council (for short 'suit premises') to the plaintiff.

3. In support of this Application, Ms. Bhattacharya strenuously contended that the Courts below were not justified in decreeing the suit under section 16 (1) (b) of the Act. She submitted that the Courts below considered reports of the Commissioner at Exhibit 53 and Exhibit 55. Reports of the Commissioner at Exhibit 53 and Exhibit 55 mention that there are six pillars constructed in bricks and cement of 2.1/4' in height and of 1.1/2 feet in width and adjacent to the house property towards northern side under the roof of the house, 30 iron dining tables, iron ladders and bamboos are kept. She submitted that basically construction of six pillars in brick and cement does not amount to permanent construction warranting passing of the decree under section 16 (1) (b) of the Act. She relied upon paragraphs 81 to 83 in the decision of **Vasant Mahadeo Gujar Vs. Baitulla Ismail Shaikh & Anr and companion Civil Revision Applications, (2015) 5 Bom. C.R.243.**

4. Ms. Bhattacharya further submitted that though the Courts below have decreed the suit also on the ground of change of user of the suit premises from residential to commercial, no section of the Rent Act is quoted. Apart from that, she submitted that the suit premises is not used for carrying on business but is used only for storage of certain articles as the defendant's son Mahesh is carrying on business of mandap decoration. She submitted that defendant's son Mahesh is not actually carrying on business in the suit premises and is only storing certain articles which does not amount to change of user.

5. Ms. Bhattacharya submitted that the Courts below decreed the suit under section 16 (g) of the Act. She invited my attention to the evidence of P.W.3 Sandesh Bhagat and in particular paragraph 4 of his cross-examination. He admitted that House property No.5/56-A stands in the name of Mohan Randive, House Property No.5/56-B stands in the name of plaintiff,

Chandrashekhar Randive. He admitted that in Exhibit 63, three numbers of House No.5/56-B, 5/56-B and 5/56-C are mentioned. He could not disclose who is the owner of House No.5/56-C. In short, she submitted that the plaintiff has premises other than the suit premises which will satisfy his requirement. She, therefore, submitted that the Courts below were not justified in decreeing the suit under section 16 (1) (g) of the Act.

6. On the other hand, Ms. Amin supported the impugned orders. She submitted that after appreciating the evidence on record, the Courts below have concurrently decreed the suit on the ground that the defendant has constructed pillars in bricks and cement without written permission of the plaintiff, the defendant is liable to be evicted under section 16 (1) (b) of the Act. She submitted that the defendant's witness admitted that the suit premises was exclusively given for residential purpose and the witness further admitted that her son Mahesh is carrying on business from the suit premises and that he has no premises other than the suit premises within limits of Murud Municipal Council. After considering the members in the family of the plaintiff as also premises in possession of the plaintiff namely at Thane and at Murud, the Courts below held that the plaintiff has established that these premises will not satisfy the requirement pleaded by the plaintiff. She, therefore, submitted that no case is made out for interfering with the impugned orders.

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 Courts below have decreed the suit under section 16 (1) (b), 16 (1) (g) and 16 (1) (a) of the Act r/w section 108 (o) of the T.P. Act. The Courts below noted that the plaintiff has retired from service. The plaintiff contended that he is having joint family House property of three rooms consisting of kitchen, hall, bedroom and also oti and padvi at Murud where his brother Mohan Randive,

his wife, one unmarried son and a daughter are residing. The plaintiff contended that son of Mohan Randive is of marriageable age. It has also come on record that the plaintiff has two sons. His elder son is of marriageable age and the younger son has completed his education and is in search of job. Having regard to the fact that the plaintiff is having joint family house property at Murud consisting of three rooms and in that house, his brother, his wife and mother are staying and son of his brother Mohan Randive is of marriageable age, it is impossible for him to stay in the joint family. The Courts below found that except the suit property, there is no other property for him. The Courts below after appreciating the evidence on record have held that the need pleaded by the plaintiff is reasonable as also bona fide. The Courts below also held that greater hardship will be caused to the plaintiffs if eviction decree is refused.

8. In so far as ground under section 16 (1) (b) is concerned, the Courts commissioner's report at Exhibit 55 depicts that the defendant has constructed pillars in bricks and cement of 2.1/4' in height and of 1.1/2 feet in width. Apart from that the defendant also stored adjacent to the house property towards northern side under the roof of the house, 30 iron dining tables, iron ladders and bamboos. The defendant admitted that her son is keeping these articles of Mandap decoration in the suit property where she is staying and that he is also taking and bringing the articles of mandap decoration. The defendant admitted that her son is not having another premises within the limits of Murud Municipal Council. Thus, the Courts below after appreciating the evidence on record have concurrently noted that the defendant is using the suit premises for mandap decoration business and the suit premises was given only for residential purpose.

9. Ms. Bhattacharya relied on the decision in the case of **Vasant Mahadeo Gujar** (supra). In paragraph 83, it was observed thus;

“The material on record, as analysed by the Trial Court clearly reveals that the suit premises No.2, which are adjacent to almost similar premises in the occupation of the landlords are used for the purposes of sale of some handcrafts, Mahabaleshwar sticks etc. During the tourist season, all such shops, erects temporary structures to cover the small space between the actual shop and the road. There is absolutely no element of any permanence in so far as the erection of such temporary shed/covering is concerned. The explanation to Section 16 (1) (b), which has not even been adverted to by the Appeal Court provides that the expression “permanent structure” does not include the carrying out of any work with the permission wherever necessary, of the Municipal Authority, for providing a wooden partition, standing cooking platform in kitchen, door, lattice work or opening of a window necessary for ventilation, a **fall** ceiling, installation of air-conditioners, an exhaust outlet or a smoke-chimney. There must be an element of permanency in the structure, because a temporary structure of the nature described in the evidence adduced by the tenants, is not within the contemplation of Section 16 (1) (b) of the Rent Act”.

In view of the findings recorded by the Courts below, the above decision is not applicable to the facts of the present case.

10. Section 16 (1) (a) of the Act lays down that notwithstanding anything contained in this Act but subject to the provisions of Section 25, a landlord is entitled to recover possession of any premises if the Court is satisfied that the tenant has committed any act contrary to the provisions of clause (o) of the T.P. Act. Section 108 (o) of the T.P. Act reads thus;

“Section 108 (o) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell [or sell] timber, pull

down or damage buildings [belonging to the lessor, or] work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto;

11. In the light of the findings recorded by the Courts below based on evidence, I do not find that the Courts below committed any error in recording the finding that the defendant has changed user of the premises from residential to commercial. Thus, after appreciating the evidence on record, the Courts below decreed the suit under section 16 (1) (b), 16 (1) (g) and section 16 (1) (a) r/w section 108 (o) of the T. P. Act.

12. In view of aforesaid discussion, it cannot be said that the findings recorded by the Courts below while decreeing the suit under Section 16 (1) (b) 16 (1) (g) and 16 (1) (a) of the Act r/w section 108 (o) of the T.P. Act are contrary to the material on record. 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 the material on record, no reasonable or prudent person would have reached 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.

13. At this stage, Ms. Bhattacharya orally prays for stay of eviction decree for a period of eight weeks from today. He states that the defendant and all the adult family members residing with him/using the suit premises will file usual undertaking in this Court within three 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 entire arrears in this Court, under intimation in writing to the learned Counsel for the plaintiff.
- [e] in case they are unable to obtain suitable orders from the higher Court within 8 weeks from today, they will hand over vacant and peaceful possession of the suit premises to the plaintiff.

14. In view thereof, notwithstanding dismissal of the Civil Revision Application, subject to the defendant filing undertaking in the aforesaid terms within three weeks from today, this order shall remain stayed for the period of 8 weeks from today. It is expressly made clear that in case the undertaking is not filed in the aforesaid terms within three weeks from today and/or in case defendant commits breach of any of the conditions of the undertaking, the plaintiff will be at liberty to execute decree. Order accordingly.

15. List the Petition for reporting compliance on 20th August, 2018.

[R.G. KETKAR, J.]