

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO.14365 OF 2016
WITH
CIVIL APPLICATION (ST) NO.1833 OF 2018

Shri S. Chatterji and others.		Applicants
Vs.		
1. Shri Charlie Dominic D'Souza		
(since deceased)		
2. Smt. Mary (Marie) D'Souza		
(since deceased)		
2(a) Mr. Blaise D'Souza and others.		Respondents

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Mr. Rakesh Kumar R. Tiwari, for Applicant.
Mr. Vikas Kumar R. Srivastava, for Respondents.

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CORAM : R.G. KETKAR, J.

DATE : 9TH MARCH, 2018.

P.C.

Heard Mr. Tiwari, learned Counsel for the petitioners and Mr. Srivastav, learned Counsel for the respondents at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the judgment and order dated 19th April, 2010 passed by the learned trial Judge in R.A.N. Application No.1104/SR of 1978 as also the judgment and order dated

26th April, 2016 passed by the Appellate Court of Small Causes Court in Revision Application No.96 of 2010. By these orders, the Courts below rejected the standard rent application filed by the petitioners.

3. The application for fixation of standard rent was filed by five tenants out of which only three tenants have instituted the present Petition. Mr. Tiwari states that he is restricting his challenge to the impugned order at the instance of petitioner No.3 only.

4. In support of this Petition, Mr. Tiwari submitted that the learned Trial Judge rejected the application on the ground that it is not maintainable. While passing the order, the Courts below did not fix the standard rent. He submitted that the Courts below committed error in holding that the application made for fixation of standard rent is not within limitation. He submitted that demand notice was issued on 11th November, 1978. The standard rent application was filed on 16th December, 1978. He submitted that the petitioner No.3 examined himself and his evidence is recorded at Exhibit 16. In the cross-examination, he agreed with the statements made by applicant No.3 (b) Nandkumar Patil and applicant No.2 Madhukar Vartak (since deceased). There was some confusion in the mind of petitioner No.3 and it is in that context, alleged admission given by him has to be construed. He has taken me through the trial Courts judgment dated 25th April, 2016 passed in Eviction Suit bearing R.A.E & R Suit No.2958 of 1979 filed against the petitioner No.3 and in particular paragraphs 45 and 46 to contend that R.P.A.D Packet was not delivered to him because he was not found in the suit premises on 13th November, 1978, 15th November, 1978 and 16th November, 1978. The Courts below further proceeded on the footing that the demand notice

dated 11th November, 1978 was served on petitioner No.3 on 13th November, 1978. Standard Rent Application was not filed within 30 days from the date of receipt of the demand notice and was filed on 16th December, 1978. The Courts below, therefore, held that it was not filed within limitation. He submitted that if deposition of petitioner No.3 in eviction suit is considered in the light of paragraphs No.45 and 46 of the judgment of the trial Court dated 25th April, 2016, it cannot be said that the Standard Rent Application was not filed within 30 days.

5. Mr. Tiwari further submitted that in any case supplementary demand notice was served on petitioner No.3 on 4th December, 1978 and, therefore, Standard Rent Application filed on 16th December, 1978 is within limitation. The Courts below held that petitioner No.3 did not file application for fixation of standard rent within a period of 30 days from receipt of the demand notice dated 11th November, 1978. Mr. Tiwari relied upon decision of the Apex Court in the case of **Ibrahim Abdulrahim Shaikh (dead) by Lrs, Vs. Krishnamorari Sripatlal Agarwal (dead) by L.Rs., AIR 1999 Supreme Court, 1609** to contend that statute namely the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Act') does not prescribe period of limitation u/s 11 (3) for filing application for fixation of standard rent or permitted increases. He, therefore, submitted that the Petition requires consideration.

6. On the other hand, Mr. Srivastava supported the impugned orders. He submitted that in the cross-examination of petitioner No.3, he clearly admitted and agreed with the statements made by applicant

No.3(b) Nandkumar Patil and applicant No.2 Mr. Madhukar Vartak (since deceased). Applicant No.2 Madhukar Vartak admitted in the cross-examination that he received demand notice under Certificate of Posting on 13th November, 1978 Exhibit C. He, therefore, submitted that application for fixation of standard rent filed on 16th December, 1978 was not filed within 30 days from receipt of the demand notice.

7. Mr. Srivastava submitted that petitioner No.3 cannot rely on the evidence adduced in the eviction suit and has to rely on the evidence adduced in the Standard Rent Application proceedings. He further submitted that petitioner No.3 never contended before the Courts below that the supplementary notice was served on him on 4th December, 1978 and, therefore, application for fixation of standard rent filed on 16th December, 1978 was within limitation.

8. I have considered the rival contentions of the parties. I have also perused the material on record. It is common ground between the parties that in respect of petitioner No.3 the contractual rent is Rs. 18/- per month and not Rs. 23/- as recorded in the impugned order. The Courts below held that the petitioner No.3 has to file application for fixation of standard rent within a period of 30 days from receipt of demand notice dated 11th November, 1978. A perusal of the material on record indicates that the demand notice was issued by respondents on 11th November, 1978. What is material to note is whether after receipt of the demand notice dated 11th November, 1978, petitioner No.3 filed application within 30 days or not? A perusal of the cross-examination of petitioner No.3 clearly shows that he admitted statements made by applicant No.3(b) Mr. Nandkumar Patil and applicant No.2 Madhukar Vartak (since deceased) in their cross-

examination. Applicant No.2 Mr. Madhukar Vartak clearly admitted that he received demand notice on 13th November, 1978. It is, therefore, not open for petitioner No.3 now to contend that he did not receive the demand notice on 13th November, 1978. It is in that context, one has to consider findings recorded by the Courts below. It may be that u/s 11 (3) of the Act, no time limit for filing standard rent application is prescribed. However, what is material is whether tenant is entitled to claim protection for eviction u/s 12 (3) (a). In order to avail benefit from eviction, he has to make application within 30 days from receipt of the demand notice. The Courts below have concurrently found that petitioner No.3 did not file application within 30 days from receipt of the demand notice.

9. In view thereof, I do not find that the Courts below committed any error in this regard. Even assuming that the application filed by petitioner No.3 is within limitation, having regard to the agreement at Exhibit 21 and in particular, clause (7), where petitioner No.3 and others agreed that on the date of execution of that agreement on 26th September, 1977, landlords have carried out repairs as Municipal Corporation's requisition and the rent charged is legitimate and normal, I do not find that the Courts below committed any error in rejecting the application. The impugned orders deserve to be modified to the extent that the standard rent in respect of the suit premises of petitioner No.3 is Rs. 18/-. Subject to that, Petition fails and the same is dismissed.

10. Mr. Tiwari relied on paragraphs 45 and 46 of the trial Court's judgment dated 25th April, 2016 to contend that R.P.A.D packet was not delivered to petitioner No.3 as he was not found in the

suit premises on 13th November, 1978, 15th November, 1978 ad 26th November, 1978. On the other hand, Mr. Srivastava submitted that the petitioner has to rely on evidence adduced in the standard rent application proceeding and not on the evidence adduced in the eviction suit. I find merit in the submission that petitioner No.3 cannot rely on the evidence in eviction suit while deciding the Standard Rent Application. There is no dispute that Petitioner No.3 has paid costs to the learned Counsel for the respondent as per order dated 13th February, 2018.

11. As main Petition is disposed of, Civil Application for staying hearing of the Appeal No.43 of 2016 in R.A.E & R Suit No. 2958 of 1979 does not survive and the same is disposed of. Order accordingly.

[R.G. KETKAR, J.]