

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 43 OF 2017
With
Civil Revision Application NO. 119 OF 2017

Shantilal Liladhar Shah,
since deceased through
1a. Jeevanlata Shantilal Shah
and others.

...Applicants

Versus

Kavita Rajendra Lunkad
deleted-since deceased
through 1(a) Rajendra Pukhrajmal Lunkad
and others.

...Respondents

....

Mr. A.S. Khandeparkar, Advocate a/w. Amogh Karandikar i/b.
Khandeparkar & Asso. for the Applicants.

Mr. P.J. Thorat, Advocate for the Respondents.

....

CORAM : R. G. KETKAR, J.

DATE : 14th MARCH, 2018

PC.

1. Heard Mr.A.S. Khandeparkar, learned Counsel for the applicants and Mr.P.J. Thorat, learned counsel for the respondents, at length.

2. Civil Revision Application No.43/2017 takes exception to the judgment and decree dated 20.4.2011 passed by the learned Judge, Court Room No.11 of the Small Causes Court at Bombay in R.A.E. Suit No.928/1605 of 2001 as also the judgment and decree dated 27.7.2016

passed by the Appellate Bench of the Small Causes Court at Bombay in (A-1) Appeal No.39/2011. By these orders, the Courts below decreed the suit under Sections 13(1)(k) and 13(1)(l) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, 'Bombay Rent Act') and Section 108(o) of the Transfer of Property Act, 1882 (for short, 'T.P. Act').

3. Civil Revision Application No.119/2017 takes exception to the judgment and decree dated 30.7.2012 passed by the learned Judge, Court Room No.21 of the Small Causes Court at Bombay in R.A.E. & R. Suit No.379/550 of 2006 as also the judgment and decree dated 27.7.2016 passed by the Appellate Bench of the Small Causes Court at Bombay in (2-A) Appeal No.47/2012. By order dated 30.7.2012, the trial Court decreed the suit only under section 15 of the Maharashtra Rent Control Act, 1999 (for short, 'Maharashtra Rent Act') and did not accept the ground invoked by the plaintiffs under Section 16(1)(e) of the Maharashtra Rent Act. As against this, the Appellate Court decreed the suit under Sections 15 and 16(1)(e) of the Maharashtra Rent Act.

4. These applications are filed under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'). Since the issues involved in both the Civil Revision Applications as also the parties are one and the same, they are heard together and are being disposed of by this

common order.

5. In support of C.R.A. No.43/2017, Mr. Khandeparkar submitted that original defendant No.1 Shantilal Liladhar Shah is the eldest brother. Defendant No.2 Pankaj Shah is the youngest brother. He is residing in Flat No.5, 2nd floor, 'Sarah Lodge' situate at 48, Keluskar Marg, Dadar, Mumbai – 400 028 (for short, 'suit premises'), as a family member. As the suit premises are let out for residential purposes and defendant No.2 being a family member is occupying the suit premises, the Courts below were not justified in passing the decree under Section 13(1)(k) of the Bombay Rent Act. It cannot be said that there is non-user of the suit premises.

6. Mr. Khandeparkar further submitted that the Courts below decreed the suit on the ground that defendant No.1, after coming into force of the Bombay Rent Act has acquired vacant possession of a suitable residence. He submitted that the findings recorded by the Courts below are perverse. The Courts below were not justified in decreeing the suit under Section 108(o) of the T.P. Act. He, therefore, submitted that the application requires consideration.

7. In support of C.R.A. No.119/2017, Mr. Khandeparkar submitted that the learned trial Judge passed the decree only under Section 15 of the Maharashtra Rent Act and did not accept the ground

of unlawful sub-letting under Section 16(1)(e) of the Act. The Appellate Court held that as defendant No.1 is the tenant and he has parted with the possession of the suit premises in favour of defendant No.2, the plaintiff is entitled to the decree even under Section 16(1)(e) of the Act. He submitted that the findings recorded by the Courts below are perverse and, therefore, require interference by this Court.

8. On the other hand Mr. Thorat supported the impugned orders. He submitted that after appreciating the evidence on record, the Courts below have concurrently held that defendant No.1 Shantilal Liladhar Shah is the tenant of the suit premises. He has permanently shifted to flat No.3, Gopal Bhawan and defendant No.2 is not a tenant. Defendant No.2 is residing in the suit premises. He has taken me through the findings recorded by the Courts below.

9. Mr. Thorat further submitted that defendant No.1 is the tenant of the suit premises. The rent receipts are issued in his name. Defendant No.2, though is brother of defendant No.1, is in possession of the suit premises. He has taken me through the findings recorded by the Appellate Court in paragraphs-21 and 22 to contend that the Appellate Court was justified in decreeing the suit under Section 16(1)(e) of the Maharashtra Rent Act.

10. I have considered the submissions advanced by the learned

Counsel appearing for the parties. I have also perused the material on record. As far as C.R.A. No.43/2017 is concerned, as noted earlier, the Courts below have decreed the suit under Section 13(1)(k) and 13(1)(l) of the Bombay Rent Act and Section 108(o) of the T.P. Act. The learned trial Judge has discussed the grounds under Sections 13(1)(k) and 13(1)(l) of the Bombay Rent Act from paragraphs-16 to 34. In paragraph-16, the learned trial Judge observed that defendant No.1 admitted that his son, wife, daughter-in-law, grand-son and daughters are staying in Flat No.3, Gopal Bhavan, which is not the suit premises. Telephone No.455649 was installed at Gopal Bhavan, Ranade Road, Mumbai – 400 028, which is evident from Exhibit-27 being the page of telephone directory.

11. In paragraph-17, the learned trial Judge dealt with Exhibit-28, which is a certified extract of names of the voters in North Central Mumbai of Mahim area having Constituency No.34. The names of defendant No.1 or his family did not appear in the voters list of suit premises. On the contrary, at Sr. Nos.338 and 339, names of defendant No.2 and his wife are shown. Exhibits-62 and 63 are the copies of the Election Identity Cards of defendant No.2 and his wife. These Election Identity Cards show the address of the suit premises. Even the passports of defendant No.2 and his wife at Exhibit 63-A show their address of the

suit premises. The learned trial Judge has considered various documents in paragraphs-17 and 18 and held that defendant No.1 has acquired the premises in Gopal Bhavan and that defendant No.2 is residing in the suit premises. The learned trial Judge, therefore, held that the plaintiffs have established the grounds under Sections 13(1)(k) and 13(1)(l) of the Bombay Rent Act. As far as ground under Section 108(o) of the T.P Act is concerned, the learned trial Judge has discussed this aspect in paragraphs-7 to 11.

12. As far as the Appellate Court is concerned, the Appellate Court has discussed points No.1 and 2 relating to non-user under Section 13(1)(k) and acquisition of suitable residence under Sections 13(1)(l) of the Bombay Rent Act, from paragraphs-15 to 24 and held that the plaintiffs succeeded in proving both the grounds. As far as ground under Section 108(o) of the T.P Act is concerned, same is dealt in paragraph-25. The Appellate Court found that the defendants have demolished the internal walls inside the suit premises. The plaintiffs have examined the photographer to prove this ground. The defendants did not dispute the photographs in the written statement.

13. Mr. Khandeparkar submitted that said finding as recorded in paragraph-28 is contrary to the written statement of defendant No.1. In paragraph-28, the Appellate Court observed that the defendants being

the residents of the suit premises are expected to be aware of the photographs. They themselves have not come out with any photographs to show that the walls were not demolished and they are standing as it is. The photographs filed by the plaintiffs show that the walls were removed and the debris was lying on the floor. The photographs further show that the said walls were removed recently. The defendants have not put any suggestions to the plaintiffs that the said photographs were not of the suit premises nor the defendants themselves have produced any photographs to show contrary position. Thus the Courts below, after appreciating evidence on record, have concurrently decreed the suit under Sections 13(1)(k) and 13(1)(l) of the Bombay Rent Act as also Section 108(o) of the T.P. Act.

14. The defendants are not in a position to demonstrate that the findings recorded by the Courts below are perverse, being based upon no evidence or that they are contrary to the evidence on record. The defendants are also not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the Courts below. Hence, no case is made out for invocation of powers under Section 115 of C.P.C. C.R.A. No.43/2017 fails and the same is dismissed with no order as to costs.

15. Insofar as C.R.A. No.119/2017 is concerned, the Courts

below have decreed the suit under Section 15 of the Maharashtra Rent Act. Insofar as the trial Court is concerned, it has discussed this issue in paragraphs-7 to 18. The Appellate Court has considered this aspect in paragraphs-18 to 20. The Appellate Court noted that the demand notice was issued by the plaintiffs on 30.6.2004 calling upon defendant No.1 to pay to the plaintiffs a sum of Rs.66,218/- being the arrears of rent, permitted increases, repair cess, water taxes etc. for the period from 1.10.1998 till 31.5.2004. Defendant No.1 replied that notice through Advocate on 20.7.2004 but failed and neglected to pay an amount within 90 days period. For the reasons recorded in paragraph-20 of the impugned order, I do not find that the Appellate Court committed any error in concurring with the trial Court while decreeing the suit under Section 15 of the Maharashtra Rent Act. DW-1 admitted in cross-examination that he had not tendered arrears of rent and permitted increases along with reply dated 20.7.2004. He made application on 6.9.2007 in the Court for permission to deposit the arrears of rent from October, 1998 to June, 2007.

16. Insofar as the ground under Section 16(1)(e) of the Maharashtra Rent Act is concerned, the trial Court declined to pass the decree on that ground. As far as the Appellate Court is concerned, the Appellate Court has considered this aspect in paragraphs-21 and 22 and

noted that defendant No.1 is a tenant and he is not residing in the suit premises. He has shifted to Gopal Bhavan and defendant No.2 is in exclusive possession. For the reasons recorded in paragraphs-20 to 22, I do not find that the Appellate Court committed any error in decreeing the suit under Section 16(1)(e) of the Maharashtra Rent Act.

17. The defendants are not in a position to demonstrate that the findings recorded by the Courts below are perverse, being based upon no evidence or that they are contrary to the evidence on record. The defendants are also not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the Courts below. Hence, no case is made out for invocation of powers under Section 115 of C.P.C. C.R.A. No.119/2017 fails and the same is dismissed with no order as to costs.

18. At this stage, Mr. Khandeparkar orally applies for stay of this order for a period of eight weeks from today. Mr. Khandeparkar states that the applicants are in possession and they have neither created third party interest nor parted with the possession. They will hereafter neither create third party interest nor part with the possession. He further states that the applicants and all adult family members residing with them are ready and willing to give usual undertaking within two weeks from today. Learned Counsel for the respondents opposes said

prayer.

19. Having regard to the fact that applicants desire to challenge this order before the Apex Court, in my opinion, ends of justice would be met by staying operation of this order for a period of eight weeks from today subject to the applicants and all adult members residing with them giving usual undertaking to this Court within two weeks from today incorporating therein:

- (i) that they are in actual possession of the suit premises and nobody else is in possession;
- (ii) that they have so far neither created third party interest nor parted with the possession of the suit premises;
- (iii) that they will hereafter neither create third party interest nor part with the possession of the suit premises;
- (iv) that they will pay the arrears of rent, if any, to the respondents within two weeks from today; and
- (v) that in case the applicants are unable to obtain suitable orders within eight weeks from today from the higher Court, they will deliver vacant and peaceful possession of the suit premises to the respondent.

20. In view thereof, notwithstanding dismissal of Civil Revision Applications, this order shall remain stayed for a period of eight weeks from today, subject to the applicants filing undertaking in the aforesaid terms within two weeks from today, with copy in advance to the other side. In case the applicants do not file undertaking in the above terms

and/or arrears of rent are not paid within two weeks from today, the interim order shall stand vacated without further reference to the Court. List the applications for reporting compliance after two weeks. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)