

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.527 OF 2016

Arahatdas Hirachand Shah ... Applicant
Vs.
Jabbar Ibrahim Bagwan and others ... Respondents

Ms Savita A. Prabhune for Applicant.
Mr. Rahul S. Kate for Respondents No.1, 2 and 4.
Mr. Sangram L. Suryawanshi for Respondent No.3.

CORAM : R. G. KETKAR, J.
DATE : APRIL 18, 2018

P.C. :

Heard Ms Prabhune, learned Counsel for the applicant, Mr. Kate, learned Counsel for the respondents No.1, 2 and 4 and Mr. Suryawanshi, learned Counsel for the respondent No.3 at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicant has challenged the judgment and decree dated 15.09.2014 passed by the learned District Judge-1, Baramati in Regular Civil Appeal No.66 of 2008. By that order, the learned District Judge allowed the Appeal and quashed and set aside the judgment and decree dated 02.08.2008 passed by the learned Joint Civil Judge, Junior Division, Baramati in Regular Civil Suit No.190 of 2002 and dismissed the Suit instituted by applicant, hereinafter referred to as 'plaintiff'.

3. The matter was heard on 29.08.2016 and leave to convert Writ Petition into C.R.A. was granted. The submissions advanced by Ms Prabhune based upon the notice dated 20.02.2002 issued by the Baramati Municipal Council (for short 'Council') under Section 195 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial

Townships Act, 1965 (for short 'Act') was referred. Notice was issued to the respondents for final disposal of the Application. It was also made clear that if respondents fail to appear, the Court would proceed to decide the Application on its own merits. As respondent No.3 was not served, fresh notice was issued on 19.03.2018 and parties were put to notice that subject to the time constraint and convenience of the Court, Application will be disposed of finally at the stage of admission. In pursuance thereof, Mr. Suryawanshi has entered appearance on behalf of the third respondent. At his request, matter was adjourned till today. Rule. Learned Counsel for respective respondents waive service. In view of the orders dated 29.08.2016 and 19.03.2018, Rule is made returnable forthwith and the Application is taken up for final hearing.

4. In support of this Application, Ms Prabhune submitted that plaintiff instituted Suit on 16.09.2002 inter alia contending that Council had issued notice on 20.02.2002 under Section 195 of the Act on the ground that the suit property is in a ruinous and dilapidated condition and called upon the plaintiff to pull down the dilapidated and dangerous part of the building forthwith. By that notice, even penal action was proposed against the plaintiff in the event of his failure to comply the notice. In pursuance thereof, plaintiff issued notice dated 06.06.2002 calling upon the defendants to vacate the suit premises by the end of that month. Defendants vide reply dated 12.06.2002 refused to vacate the suit premises. It is in these circumstances, plaintiff instituted Suit on 16.09.2002 against the defendants for recovery of possession.

5. Ms Prabhune submitted that defendant No.2 filed written statement vide exhibit-12. Defendants No.1, 3 and 4 adopted that written statement by filing purshis exhibit-14. Defendants No.5 and 6 remained absent and the Suit proceeded ex-parte against them. She invited my attention to the findings recorded by the learned trial Judge against

issues No.(1) and (2). She also invited my attention to paragraph 5 of the plaint where inadvertently, plaintiff mentioned that Suit is instituted under Section 13(1)(hhh) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Bombay Rent Act'). She submitted that in fact plaintiff ought to have referred to Section 16(1)(k) of the Maharashtra Rent Control Act, 1999 (for short 'Maharashtra Rent Act'). In fact in paragraph 15, the learned trial Judge has referred to provisions of Section 16(1)(k) of the Maharashtra Rent Act. After considering the evidence on record, the learned trial Judge decreed the Suit. She invited my attention to the impugned order and in particular, the points framed by the learned District Judge. While answering point No.3, the learned District Judge considered the evidence on record, and in paragraph 18 held that plaintiff has established that the suit premises is required by him for immediate purpose of demolition in view of the notice issued by the Council and accordingly answered that point in the affirmative. While answering point No.4, the learned District Judge considered the decisions relied by the parties, namely,

- a. *Commissioner, M.C.G.M. Vs. Anil Shantaram Khoje*, **AIR 2014 SC 1353**, and in particular paragraph 10 thereof;
- b. *Babu Verghese Vs. Bar Council of Kerala*, **1999 (3) SCC 422**;
- c. *Gajraj Singh Vs. The State Transport Appellate Tribunal*, **AIR 1997 SC 412**; and
- d. *Nazir Ahmed Vs. King Emperor*, **AIR 1936 Privy Council 523**.

6. The learned District Judge observed that it is settled principle of law that if the manner of doing a particular act is prescribed under any Statute, the act must be done in that manner or not at all. Similarly to that effect Privy Council in **Nazir Ahmed** (*supra*) held that “If the manner of doing a particular act is prescribed under any Statute, the act must be done in that manner or not at all.” The learned District Judge

held that as the plaintiffs had instituted Suit under Section 13(1)(hhh) of the Bombay Rent Act, after coming into force of Maharashtra Rent Act with effect from 31.03.2000, the Suit was not maintainable. Accordingly, the learned District Judge allowed the appeal and dismissed the Suit.

7. Ms Prabhune submitted that defendants No.1, 2 and 4 have entered into agreement with the plaintiff and have handed over possession. She, therefore, submitted that impugned order deserves to be set aside thereby decreeing the Suit instituted by the plaintiff.

8. Mr. Kate invited my attention to the decision of this Court in ***Balasaheb vs. Rohidas, 2007 (3) Mh. L.J.467***, and in particular paragraphs 9 and 12 thereof.

9. On the other hand, Mr. Suryawanshi supported the impugned order. He submitted that from perusal of the plaint, it is evident that plaintiff has instituted Suit under Section 13(1)(hhh) of the Bombay Rent Act and not under Section 16(1)(k) of the Maharashtra Rent Act. The learned trial Judge was, therefore, not justified in decreeing the Suit. As against this, the Appellate Court rightly interfered with the trial Court's judgment and dismissed the Suit. He further submitted that plaintiff claims to have entered into settlement with defendants No.1, 2 and 4 of which he is not aware. He, therefore, submitted that no case is made out for invocation of powers under Section 115 of C.P.C.

10. 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 paragraphs 4 and 5 of the plaint undisputedly shows that plaintiff has referred to the notice dated 20.02.2002 issued under Section 195 of the Act by Council calling upon the plaintiff to pull

down the dilapidated and dangerous part of the building forthwith. By that notice, even penal action was proposed against the plaintiff in the event of his failure to comply the notice. In pursuance thereof, plaintiff issued notice dated 06.06.2002 calling upon the defendants to vacate the suit premises by the end of that month. Defendants vide reply dated 12.06.2002 refused to vacate the suit premises. It is in these circumstances, plaintiff instituted Suit on 16.09.2002.

11. A perusal of the trial Court's judgment in respect of findings against issues No.(1) and (2) clearly shows that the learned trial Judge noted that suit building is 70 to 80 years old and the plaintiff has established that the suit property is in dilapidated condition. The said finding was recorded by the learned trial Judge, after considering the evidence adduced by the parties. In paragraph 15, the learned trial Judge referred to Section 16(1)(k) of the Maharashtra Rent Act and answered issue No.2 in the affirmative by holding that plaintiff is entitled to possession of the suit premises.

12. A perusal of judgment of the learned District Judge in respect of discussion against points No.3 and 4 shows that the learned District Judge also came to the conclusion that the plaintiff has established that the suit premises is required by him for immediate purpose of demolition in view of the notice issued by the local authority namely, Council. Thus, the said finding was arrived at by the learned District Judge, after considering the evidence adduced by the parties.

13. However, while answering point No.4, the learned District Judge considered the decisions, which are already referred hereinabove, and came to the conclusion that as the Suit is instituted under the old Act, namely under Section 13(1)(hhh) of the Bombay Rent Act and not under Section 16(1)(k) of the Maharashtra Rent Act, the same is not

maintainable. In the case of **Balasaheb** (*supra*), the learned Single Judge has considered this aspect in paragraphs 9 and 12. In paragraph 9, the learned Single Judge (Coram: R. M. S. Khandeparkar, J.) noted the contentions advanced on behalf of the petitioner tenant that there was a clear admission on the part of the respondent (plaintiff) that the proceedings though were initiated after 31.03.2000, they were initiated under old Rent Act (Bombay Rent Act) and therefore, the proceedings should be considered as not maintainable and should be dismissed accordingly. Dealing with these submissions, it was observed thus,

“... Indeed, it cannot be disputed that when the claim or application for eviction was filed by the respondent, it did disclose the same was filed in terms of provisions of old Rent Act. But at the same time, it is well settled law that the jurisdiction of the Court depend upon the facts pleaded in the application and not on the basis of the provisions of law cited by the party in the application. If the facts disclosed in the plaint or the application for eviction of a tenant sufficiently make out a case which could fall within the parameters of provisions of law under the new Rent Act, merely because the respondent had referred to the provisions of the old Rent Act, the proceedings can be held to be bad in law or not maintainable. Once it was clear that the proceedings were initiated on or after 31st March, 2000, and it was relating to the subject of eviction of tenant from a building, it could not have been tried as one under the old Rent Act which was already repealed on 31st March, 2000 and was replaced by the new Rent Act. On the contrary, irrespective of the provisions of law under the old Rent Act having been referred to in such application or plaint, the court will have to consider the same in terms of the provisions of the new Rent Act. Of course, if the facts are not sufficient to disclose cause of action for initiating proceedings in terms of the provisions of new Rent Act the same could be rejected. The jurisdiction of the Court does not depend upon the consent or the concession made by the party in relation thereto. It depends upon the statutory provisions which give jurisdiction to a court to entertain the particular application or the proceedings. Once the pleadings in the application filed by the respondent disclosed necessary facts which revealed the cause of action in terms of the provisions of the new Rent Act, nothing prevented the Small Clause Court, which is the court duly empowered to entertain the applications for eviction under the new Rent Act, to

entertain the application filed by the respondent irrespective of the fact that the application referred to the provisions of the old Rent Act.”

14. In paragraph 12, it was observed thus,

“12. Once the applicant disclosed necessary facts to reveal cause of action in terms of provisions of new Rent Act irrespective of the fact that there was also reference to the old Rent Act, it would not divest the Small Causes Court from entertaining the application filed by the applicant against the opponent party. The Trial Court, therefore, was justified in considering the application to be under the New Rent Act and deciding it accordingly. The contention against the same sought to be raised on behalf of the petitioner, therefore, is devoid of substance.”

15. In my opinion, the decision of **Balasaheb** (*supra*) applies to the facts of the present case in all fours. In view thereof, I do not find any merit in the submission of Mr. Suryawanshi that the learned District Judge was justified in dismissing the Suit. Mr. Suryawanshi further submitted that plaintiff claims to have entered into settlement with defendants No.1, 2 and 4 of which he is not aware. Even if the settlement entered into between plaintiff and defendants No.1, 2 and 4 is excluded from consideration, on merits, I find that the learned District Judge was not justified in dismissing the Suit. Hence, Application Succeeds. Rule is made absolute in terms of prayer clause (ii) with no order as to costs and Regular Civil Suit No.190 of 2002 instituted by the plaintiff stands decreed. Order accordingly.

(R. G. KETKAR, J.)

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