

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.153 OF 2018

Dhanraj Laxman Ket ... Applicant
Vs.
Vivek Prabhakar Ayachit ... Respondent

Mr. Prasad P. Kulkarni for Applicant.
Mr. Milind R. Deshpande for Respondent.

CORAM : R. G. KETKAR, J.
DATE : JUNE 20, 2018

P.C. :

Heard Mr. Kulkarni, learned Counsel for the applicant and Mr. Deshpande, 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.'), applicant, hereinafter referred to as 'defendant', has challenged the judgment and decree dated 23.09.2016 passed by the learned 10th Joint Civil Judge, Junior Division, Solapur in Regular Civil Suit No.862 of 2013 as also the judgment and decree dated 02.05.2017 passed by the learned Ad-hoc District Judge-3, Solapur in Regular Civil Appeal No.277 of 2016. By these orders, the Courts below decreed the Suit instituted by the respondent, hereinafter referred to as 'plaintiff', and directed the defendant to handover possession of flat No.4, plot No.3/B/2/B situate at Uday Apartment Murarji Peth, Solapur admeasuring 66.14 square meters, more particularly, described in the plaint (for short 'suit premises'). The Courts below also directed the defendants to pay arrears of rent from 02.09.2010 to 01.09.2013 at the rate of Rs.1500/- per month amounting to Rs.54,000/- to the plaintiff.

3. In support of this Application, Mr. Kulkarni strenuously

contended that plaintiff had claimed possession on the ground of arrears of rent and that plaintiff requires the suit premises reasonably and bonafide as contemplated by Sections 15 and 16(1)(g) respectively of the Maharashtra Rent Control Act, 1999 (for short 'Act'). The plaintiff came with the case that his children are taking education and that the premises in his possession are not adequate. He submitted that plaintiff's children have completed education, and therefore, the need pleaded by the plaintiff does not survive.

4. Mr. Kulkarni further submitted that plaintiff alleged that the monthly rent was Rs.2,500/-. He did not establish the fact that the monthly rent is Rs.2,500/-. In pursuance of the decree passed by the trial Court directing the defendant to pay Rs.54,000/-, defendant had deposited that amount in the District Court. He submitted that the Courts below were not justified in passing decree under Sections 15 and 16(1)(g) of the Act. He further submitted that plaintiff came with the case that he is residing in a tenanted building and that the landlord had issued notice of eviction. However, in the cross-examination, he admitted that the landlord of that chawl has not issued any eviction notice. The plaintiff has also not substantiated the fact that the tenanted premises is in a dilapidated condition and that the landlord of the chawl had issued notice calling upon him to vacate the premises.

5. On the other hand, Mr. Deshpande supported the impugned orders. He invited my attention to paragraph 3 of the plaint wherein plaintiff specifically asserted that he is residing in a tenanted premises in Bhagwat Chawl. He submitted that son of the plaintiff is residing in Solapur along with the plaintiff. He submitted that the Courts below, after appreciating the evidence on record, have held that defendant has not adduced any evidence. He has not paid rent after service of notice on 15.04.2013 at the rate of Rs.1500/- per month. The Courts below,

therefore, decreed the Suit on the ground under Section 15 of the Act. As far as the ground under Section 16(1)(g) is concerned, the Courts below considered the fact that plaintiff is residing in the rented house, which is a very old structure. Having regard to the fact that there are 4 members in his house and plaintiff is residing in two rooms of rented house, the Courts below held that need pleaded by the plaintiff is, both, reasonable and bonafide. Considering the age of the plaintiff's son, it can be presumed that he has attained marriageable age. He, therefore, submitted that no case is made out for interfering with the impugned orders.

6. 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 material on record shows that plaintiff came with the case that monthly rent is Rs.2,500/-. As against this, defendant came with the case that monthly rent is Rs.1,500/-. Defendant was served with the demand notice on 15.04.2013. Defendant did not produce any material on record to establish that after receipt of the demand notice, he has complied requisition of that notice. In fact, defendant even did not reply the said notice. In paragraph 12, the District Court observed that defendant has not adduced any evidence to prove that he has paid rent. The contention of the plaintiff that he did not receive the rent from the date of determination of the tenancy seems to be probable and acceptable. The learned District Judge accordingly upheld the finding of the learned trial Judge and held that defendant was a willful defaulter.

7. As far as the bonafide requirement is concerned, it has come on record that the plaintiff is residing in the rented house in Bhagwat Chawl, which a very old structure. Plaintiff came with the case that there are 4 members in his family and only two rooms in rented house

are is in his possession. Plaintiff's elder son is 26 years old. Considering his age, it can be presumed that he has attained marriageable age. With the assistance of the learned Counsel for the parties, I have also perused the deposition of the plaintiff. In examination-in-chief, he reiterated the contentions that he is residing in the tenanted premises in a chawl, and that defendant is having shop in market yard and the daily collection is between Rs.8000/- and Rs.10,000/-. The Courts below, after appreciating the evidence on record, have concurrently decreed the Suit under Sections 15 and 16(1) (g) of the Act as also held that grater hardship will be caused to the plaintiff than the defendant. For the reasons recorded by the Courts below, I do not find that they have committed any error in decreeing the Suit. Defendant was 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. Defendant was 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, Application fails and the same is dismissed.

8. At this stage, Mr. Kulkarni orally applies for stay of eviction decree for a period of 8 weeks from today. He assures that within 2 weeks from today, defendant and all adult family members residing in the suit premises will furnish undertaking 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 interests nor parted with possession of the suit premises;
- (c) they will hereafter neither create third party interests nor part with possession of the suit premises;
- (d) they will deposit arrears, if any, within 2 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 respondent;

9. In view thereof, notwithstanding dismissal of the Application, subject to the defendant filing the undertaking in the aforesaid terms within two weeks from today, eviction decree shall not be executed for the period of eight 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 defendant commits breach of any of the conditions of the undertaking, respondent will be at liberty to proceed with the matter in accordance with law. In case, defendant is unable to obtain suitable orders from higher Court within a period of eight weeks and does not hand over possession of the suit premises to the plaintiff, the respondent will be at liberty to proceed with the matter in accordance with law. Order accordingly.

10. List the Application for reporting compliance on 11.07.2018.

(R. G. KETKAR, J.)

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