

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 62 OF 2018

Mr. K. Suresh
and others

...Applicants

Versus

Mrs. Venkata Subramaniam Meenakshi
And Ors.

...Respondents

....

Ms. Zenobia S. Irani, Advocate for the Applicants.

Mr. Durgaprasad Sabnis i/b. Lex Firmus, Advocate for the Respondents.

....

CORAM : R. G. KETKAR, J.

DATE : 20th AUGUST, 2018

P.C.

1. Heard Ms.Zenobia Irani, learned counsel for the applicants and Mr.Durgaprasad Sabnis, learned counsel for the respondents, at length.

2. By this application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicants have challenged the judgment and decree dated 10.6.2013 passed by the learned Judge, Court Room No.10 of the Small Causes Court at Mumbai in R.A.E. Suit No.234/368 of 2007 as also the judgment and decree dated 30.10.2017 passed by the Appellate Bench of the Small Causes Court in Mumbai in (A-1) Appeal No.81/2013. By these orders, the Courts below decreed the suit instituted by the respondents under Sections 16(1)(g) of the

Maharashtra Rent Control Act, 1999 (for short, 'Act') and directed the applicants to hand over vacant and peaceful possession of Flat No.25, 3rd floor, Wadala Maheshwar Co-operative Housing Society Ltd., situate at 80, Rafi Ahmed Kidwai Road, Wadala, Mumbai – 400 031 (for short, 'suit premises').

3. The respondents are the heirs and legal representatives of Padmanabhan Venkata Subramaniam (for short, 'original plaintiff') who has instituted Suit against the applicants No.1 to 3 (original defendants No.2 to 4) and Mrs. Seetha Krishnaswamy, since deceased, (original defendant No.1) invoking the ground under Section 16(1)(g) of the Act. During pendency of appeal original plaintiff as also original defendant No.1 died. Original plaintiff died leaving behind the respondents herein. Original defendant No.1 died leaving behind the applicants herein.

4. In support of this application, Ms. Irani strenuously contended that the need pleaded by the original plaintiff is neither reasonable nor bonafide. In fact, the need of the plaintiff is malafide. She invited my attention to the letter dated 2.3.2005 which was marked as Exhibit-39 and the letter dated 15.6.2006 which was marked as Exhibit-40. By letter dated 2.3.2005, the original plaintiff offered to sell the suit premises for consideration of Rs.15 Lakhs. By subsequent letter

dated 15.6.2006 at Exhibit-40, he reiterated the proposal made by him in paragraph-3 of letter dated 2.3.2005 and awaited the offer of original defendant No.1. She submitted that the suit is instituted on 31.1.2007. The very fact that by letters dated 2.3.2005 and 15.6.2006 the original plaintiff offered to sell the suit premises itself suggests that the requirement pleaded by the original plaintiff is not bonafide. The original plaintiff did not disclose these letters either in plaint or even in examination-in-chief and when said letters were confronted to the original plaintiff during the course of cross-examination, he admitted the contents of these letters. She, therefore, submitted that the Courts below were not justified in decreeing the suit under Section 16(1)(g) of the Act.

5. Ms. Irani further submitted that during pendency of the appeal, original plaintiff died. The applicants, therefore, took out application at Exhibit-35 under Order XLI Rule 27 of C.P.C. for adducing additional evidence or in the alternative for bringing on record the subsequent event, namely, death of original plaintiff on 20.12.2015. As the original plaintiff died, the need pleaded by him is extinguished. Even on this count, the Courts below were not justified in decreeing the suit under Section 16(1)(g) of the Act.

6. Ms. Irani has taken me through the plaint and in particular

paragraphs-12 to 16, oral evidence of original plaintiff as also the letters dated 2.3.2005 and 15.6.2006. She also relied upon the decision of **Sheshambal (Dead) through L.Rs v. Chelur Corporation Chelur Building and others, 2010 Bom.R.C. 277** to contend that as the original plaintiff had died pending the appeal, the need is extinguished.

7. On the other hand, Mr. Sabnis has supported the impugned orders. He submitted that a perusal of the plaint will indicate that the original plaintiff has pleaded the requirement of himself as also the requirement of his wife. The original plaintiff has further pleaded that his son-in-law is carrying on computer software business in the name and style of “Karomy Technology” which is a software company. The original plaintiff has pleaded that whenever his son-in-law visits Mumbai on a business trip he can stay in the suit premises instead of spending on lodging house. The daughter and son-in-law can also come for short holidays and be with the original plaintiff and his wife. He submitted that his son-in-law and daughter of the original plaintiff were examined.

8. Mr. Sabnis distinguished the judgment in **Sheshambal's** case (supra) by submitting that in paragraph-12 the Apex Court noted that the eviction petition was instituted setting out the requirement of the owners and was totally silent about the requirement of any member of

the family who was dependent upon the petitioners therein.

9. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. The original plaintiff has invoked the ground under Section 16(1)(g) of the Act for recovery of possession of the suit premises. The original plaintiff has claimed possession on the ground that in 1987 he was posted to Southern Railways at Madras and from there he retired in the year 1991. The original plaintiff started residing in his ancestral premises that is his father's place at his native place at Madras. He is residing on the ground floor premises along with his wife. The original plaintiff has two married daughters. One daughter by name Usha Ramkumar is residing with her husband in U.S.A. She is a U.S.A. Citizen. Other married daughter by name Sujata Subramaniam is residing with her husband Vilva Natrajan and her two minor children on leave and licence basis in flat No.1A, "Saraswathi" situate at Old No.2, New No.3, VI Cross Street, CIT Colony, Chennai – 600 004. The landlords of the said premises through their Constituted Attorney have served a notice on Sujata Subramaniam on 2.1.2007 calling upon her to vacate the premises. The original plaintiff's son-in-law is carrying on his computer software business from the first floor of the ancestral property of the original plaintiff.

10. The original plaintiff has further asserted that he had spent 20 years of the best period of his life in the service of Western Railway in Mumbai, which place has a different outlook and a cosmopolitan atmosphere. He is accustomed to a different style of life and he finds it difficult to live at Chennai although it is his native place. He is forced to stay in native place as the suit premises is in possession of the defendants and the original plaintiff has been trying his best to get possession of the suit premises way back from 1975 and had in fact served a notice on the original deceased tenant.

11. The original plaintiff has further contended that his son-in-law is highly qualified as he is M.S. (Electrical Engineering) and M.S. (Computer Science) from U.S.A. Presently his son-in-law is not doing well in his business and wants to expand his business by developing contacts in Mumbai, which is the business and financial center of India. His son-in-law would, therefore, like to come to Mumbai often and stay in Mumbai to get business contact in Mumbai but neither the original plaintiff nor his son-in-law has any place in Mumbai. It is further contended that staying in Mumbai in hotels or lodging houses is very expensive and hence the suit premises would be very ideal even for son-in-law to come to Mumbai to develop business contacts and stay in the suit premises along with the original plaintiff. It is further contended

that the plaintiff's daughter Sujata is M.B.A. (IIM, Calcutta) and is working in a private firm. Said daughter wants to give up her job in the said private firm and stay on the ground floor in the ancestral premises of the original plaintiff so that she can not only take care of her children but also help her husband in the computer software business.

12. The original plaintiff further pleaded that his daughter and son-in-law are temporarily residing on leave and licence basis in Flat No.1A, Saraswathi, situate at Old No.2, New No.3, CIT Colony, Chennai – 600 004. His daughter and son-in-law have to leave the said premises. It is contended that “the plaintiff has to accommodate them in his ground floor premises there will be no privacy at all and the married life of the Plaintiff's daughter and that of the son in law will suffer and the said minor children will also suffer.” It is further contended that the original plaintiff, therefore, has instituted suit against the defendants to evict them from the suit premises as he along with his wife will live in Mumbai in the suit premises and give the entire premises i.e. ground and upper floor to the married daughter, son-in-law and two minor children.

13. In paragraph-16, it is contended that the original plaintiff wants to come and residing in the suit premises along with his wife. The plaintiff has stayed in Mumbai when he was serving for the Railways and has got a vast friend circle. He has developed special attachment to

Mumbai. Mumbai atmosphere keeps the original plaintiff and his wife happy. Moreover, his son-in-law and daughter can come and reside with them whenever he or she is on a business trip in Mumbai.

14. The original plaintiff further contended that the deceased tenant C.V. Krishnaswamy was residing in the suit premises along with his wife defendant No1, since deceased, and three children defendants No.2 to 4. Defendant No.1, mother of defendant No.2 since deceased was residing with her married son in a spacious flat No.C-601, 6th floor, Millenium Park, Plot No.17, Sector 25, Nerul (East), Navi Mumbai - 400 706. Defendant No.2 has got his own car and his wife is also gainfully employed. Defendant No.3 after her marriage started residing with her husband elsewhere. She has booked a flat on ownership basis at Kharghar, Navi Mumbai. Defendant No.4 left the suit premises after her marriage and is residing now with her husband at Navi Mumbai.

15. In support of his case, the original plaintiff examined himself at Exhibit-26. He reiterated his case in examination-in-chief. A perusal of the cross-examination does not indicate that the applicants tried to disprove the requirement pleaded by the original plaintiff, namely, requirement of the plaintiff and his wife as also the requirement of son-in-law and daughter. In fact in the entire cross-examination no suggestion was given about the requirement of the wife of the original

plaintiff as also no attempt was made to disprove the case of the original plaintiff that whenever his daughter and/or son-in-law is on a business trip in Mumbai they can come and reside with them in the suit premises at Mumbai and can save money otherwise it will be very expensive for them to spend on their stay in hotels or lodging houses. A perusal of the cross-examination shows that mainly the original plaintiff was confronted with the letters dated 2.3.2005 and 15.6.2006.

16. Ms. Irani submitted that it is inconceivable that after death of the original plaintiff, his wife will leave Chennai where her daughter and son-in-law are residing and carrying on business and will shift to Mumbai. I do not find any merit in this submission for more than one reason. In the first place, it is the case of the original plaintiff that he along with his wife desire to shift to Mumbai so that ground-floor and first floor of the premises at Chennai can be used by their daughter and son-in-law where they can reside on the ground floor and carry on computer software business of son-in-law on the first floor. Secondly, the son-in-law and daughter visit Mumbai for business purposes. Instead of spending money on hotels and/or lodging houses they can comfortably stay in the suit premises along with wife of the original plaintiff.

17. Ms. Irani submitted that the original plaintiff's requirement is

malafide. He did not plead letters dated 2.3.2005 and 15.6.2006 in the plaint addressed by him to the defendant. Not only that he also did not depose about these letters in his examination-in-chief. Original plaintiff was confronted with these letters in his cross-examination and he admitted that he offered to sell the suit premises to defendant No.1. He also admitted the contents of these letters. She submitted that the learned trial Judge has dealt with this aspect in paragraph-21. Though the learned trial Judge observed that the original plaintiff did not plead this fact but the witness of the defendants, namely, DW-1 Seetha categorically admitted in her examination-in-chief that her husband i.e. deceased original tenant was not vacating the suit premises inspite of repeated requests, the original plaintiff therefore had given the proposal to purchase the suit premises to her husband. In other words, Ms. Irani submitted that a case is made out by the trial Court which was not even made out by the original plaintiff. I do not find any merit in this submission. In paragraph-13 of the plaint, the original plaintiff specifically asserted that he is forced to stay in native place as the suit premises is in possession of the defendants and the original plaintiff has been trying his best to get possession of the suit premises way back from 1975 and had in fact served a notice on the original deceased tenant. Thus, I find that the learned trial Judge rightly observed in paragraph-21

that when a landlord is insisting his tenant to vacate the premises and there is no response from his side, then only option for the landlord inspite of initiating legal proceeding to give offer to purchase to the tenant and from the sale proceeds purchase a new premises. The learned trial Judge also was justified in observing that the public at large have a notion that they do not get speedy justice. If the plaintiff has given this offer with this intention, no any malafides or oblique motive can be attributed on his part. It, therefore, cannot be said that as the original plaintiff offered to sell the suit premises by these letters, the suit instituted in the year 2007 lacks bonafides.

18. The learned trial Judge has considered the ground of bonafide requirement from paragraphs-16 to 28. After considering the evidence on record, the learned trial Judge held that the original plaintiff has established that his requirement is both reasonable as also bonafide. The question of comparative hardship was considered from paragraphs-29 to 37. The learned trial Judge held that greater hardship will be caused to the original plaintiff in the event of refusal to pass the eviction decree. Insofar as the Appellate Court is concerned, the Appellate Court has considered the ground under Section 16(1)(g) of the Act from paragraphs-14 to 20. After reappreciating the entire evidence on record, the Appellate Court held that after considering the

evidence on record as well as the surrounding and changed circumstances, the plaintiffs have proved that their requirement is bonafide. The question of comparative hardship was considered from paragraph-21 to 23. The Appellate Court considered that defendant No.2 is having flat at Nerul, Navi Mumbai and defendant No.3 is having a flat at Kharghar, Navi Mumbai. During the course of cross-examination of Saroja (DW-3) she stated that defendant No.4 has been residing at her flat at Kharghar. The flat at Kharghar is two bed rooms, hall and kitchen. DW-3 Saroja is issueless. Defendant No.3 can accommodate defendant No.4 and her son. Thus the Courts below after appreciating the evidence on record have concurrently held that the plaintiffs have established their requirement as reasonable and bonafide and that greater hardship will be caused to the plaintiffs in case the eviction decree is revised.

19. Ms.Irani relied upon the decision in **Sheshambal's** case (supra) to contend that on account of death of original plaintiff, the requirement is extinguished. A perusal of facts in that case and in particular paragraph-12 thereof show that in the eviction petition, the owners had pleaded their own requirement and they were totally silent about the requirement of any member of the family of the petitioners. In paragraph-11, the Apex Court reproduced Section 11(3) of the Kerala

Buildings (Lease and Rent Control Act) 1965. The relevant portion thereof reads thus :

“Section 11(3): A landlord may apply to the Rent Control Court for an order directing the tenant to put the landlord in possession of the building if he bona fide needs the building for his own occupation or for the occupation by any member of his family dependent on him.”

20. As against this, Section 16(1)(g) of the Act reads thus :

“16. When landlord may recover possession.-- (1) Notwithstanding anything contained in this Act but subject to the provisions of section 25, a landlord shall be entitled to recover possession of any premises if the court is satisfied--

(g) that the premises are reasonably and *bona fide* required by the landlord for occupation by himself or by any person for whose benefit the premises are held or where the landlord is a trustee of a public charitable trust that the premises are required for occupation for the purposes of the trust; or”

21. In the present case, the original plaintiff has pleaded his requirement as also the requirement of his wife, daughter and son-in-law. The daughter and son-in-law were also examined. After appreciating the evidence on record, the Courts below have decreed the suit under Section 16(1)(g) of the Act. It cannot be said 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. It also cannot be said that no reasonable person would have arrived at the

conclusions other than arrived by the Courts below. Merely because on the basis of evidence on record another view is possible, that itself is no ground for invocation of powers under Section 115 of C.P.C. Hence, no case is made out for invocation of powers under Section 115 of C.P.C. Civil Revision Application fails and the same is dismissed with no order as to costs.

22. At this stage, Ms.Irani orally applies for stay of eviction decree for a period of twelve weeks from today. Ms.Irani 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. She 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, with advance copy to other side. Learned Counsel for the respondents opposes said prayer.

23. 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 the eviction decree for a period of twelve 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 with advance copy to other side incorporating therein:

- (i) that they are in actual possession of the suit premises and nobody else is in possession of the suit premises;
- (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 twelve weeks from today from the higher Court, they will deliver vacant and peaceful possession of the suit premises to the respondents.

24. In view thereof, notwithstanding dismissal of Civil Revision Application, the eviction decree shall remain stayed for a period of twelve 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. If the applicants commit breach of any of the clauses of the undertaking, the interim order shall stand vacated without further reference to the Court. List the application for reporting compliance on 10.9.2018. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)