

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.103 OF 2017

Ram Briksh Gupta ... Applicant
Vs.
Sadique Ali Khan Bashir and others ... Respondents

Mr. P. S. Dani, Senior Advocate i/b. Mr. Manas N. Gawankar for Applicant.
Mr. Rahul Singh for Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : MARCH 8, 2018

P.C. :

Heard Mr. Dani, learned Senior Counsel for the applicant and
Mr. Singh, learned Counsel for the respondent No.1 at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), the applicant, hereinafter referred to as 'defendant No.1', has challenged the judgment and decree dated 11.08.2010 passed by the learned Judge, Court Room No.14 of the Court of Small Causes at Bombay in R.A.E.&R. Suit No.896/1422 of 2003 as also the judgment and decree dated 20.10.2016 passed by the appellate Bench of the Small Causes Court in Appeal No.448 of 2010. By order dated 11.08.2010, the learned trial Judge held that plaintiffs proved that defendants failed and neglected to pay arrears of rent inspite of service of valid demand notice. The learned trial Judge had framed additional issues on 09.11.2006, 05.11.2008 and 17.11.2009. On 09.11.2006, the learned trial Judge framed the issue as to whether defendant proves that the suit premises fall under slum area and in the absence of permission of the Competent Authority under Section 22 of the Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971 (for short 'Slum Act'), whether the Suit is not maintainable. On 05.11.2008,

the learned trial Judge framed issue under Section 16(1)(g) of the Maharashtra Rent Control Act, 1999 (for short 'Act') as also the issue of greater hardship. On 17.11.2009, the learned trial Judge framed additional issues to the effect as to whether the Suit is liable to be abated due to the death of the plaintiff No.2 in October 2007 and answered in the negative. Additional issue No.2, as to whether the plaintiff No.1 is the landlord / joint owner of the suit premises, was answered in the affirmative. The learned trial Judge decreed the Suit under Sections 15 and 16(1)(g) of the Act. The learned trial Judge also held that defendant No.1 failed to establish that suit premises fall under slum area and Suit is maintainable.

3. Aggrieved by this decision, defendant No.1 preferred Appeal. By order dated 20.10.2016, the appellate Court dismissed the Appeal. In paragraph 6 of the order, the appellate Court recorded that “both the parties restricted their arguments only on the maintainability of the suit” and accordingly points were framed.

4. In support of this Application, Mr. Dani invited my attention to the order dated 14.06.1979 passed by the Slum Tribunal in Appeals No.449 of 1978 and other companion appeals as also the Notification dated 05.10.1979 published in Maharashtra Government Gazette on 01.11.1979 showing 4507.4 sq.mtrs. area of C.T.S.No.191 as a slum area. Mr. Dani, therefore, submitted that as the suit property is situate in area admeasuring 4507.4 sq.mtrs. of C.T.S.No.191, the Courts below were not justified in decreeing the Suit. In fact, as the plaintiffs did not obtain prior permission of the Competent Authority under Section 22 of the Slum Act, the Suit itself was not maintainable, and as such, is liable to be dismissed.

5. Mr. Dani also tried to argue that plaintiffs have not established the

ground of default as also that they require the suit premises reasonably and bonafidely as contemplated by Section 16(1)(g) of the Act. Plaintiffs also did not establish that a greater hardship will be caused to them if decree is refused. For all these reasons, he submitted that application requires consideration.

6. On the other hand, Mr. Singh supported the impugned orders. He submitted that by order dated 14.06.1979, the Tribunal set aside Notification dated 30.06.1977 declaring different properties as slum area. He submitted that the reliance placed on the Notification dated 05.10.1979 does not advance the case of the defendant No.2 as the said notification itself clarified that it will not apply where declaration dated 30.06.1977 issued under Section 4(1) of the Slum Act has been set aside. He further submitted that it is not open to the defendant No.1 now to contend in this Court that plaintiffs have not made out grounds under Sections 15 and 16(1)(g) of the Act as the arguments before the appellate Court were restricted only on the question of maintainability of the Suit. If at all according to the defendant No.1, in paragraph 6 of the appellate Court order, it was wrongly recorded that submissions were restricted only about maintainability of the Suit, the appropriate course open to the defendant No.2 was to file review petition before the same Court. Having not availed remedy of review, defendant No.2 is bound by the statement recorded in paragraph 6 of the appellate Court's order. He, therefore, submitted that no case is made out for interfering with the impugned orders.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the learned trial Judge decreed the Suit under Sections 15 and 16(1)(g) of the Act. The learned trial Judge held that Suit is maintainable as the suit premises does not fall in the slum area.

The learned trial Judge further held that plaintiffs should establish ground under Section 13(1)(g) and that greater hardship will be caused to the plaintiffs if the eviction decree is refused. A perusal of the finding recorded by the learned trial Judge on the question of maintainability of the Suit shows that the learned trial Judge referred to the notification dated 30.06.1977 by which C.T.S.No.191 was declared as a slum area. The learned trial Judge referred to the certified copy of the judgment and order dated 14.06.1979 at exhibit-55 where the Slum Tribunal had set aside the declaration dated 30.06.1977. It was further observed that defendant No.1 did not produce any material on record to indicate that the order of the Tribunal was challenged or set aside. Mr. Dani submitted that the Note appended in the notification though stated that declaration dated 05.10.1979 is not applicable, declaration dated 30.06.1977 is set aside, nonetheless, C.T.S.No.191 admeasuring 4507.4 sq.mtrs. is shown to be declared as a slum area. I do not find any merit in this submission. A perusal of order dated 14.06.1979 shows that the Slum Tribunal had set aside notification dated 30.06.1977 in its entirety and not qua the properties of the appellants, who had preferred appeals before the Tribunal. That apart, defendant No.1 has not produced any material on record to show that the order of the Tribunal was either challenged or has been set aside. Thus, one has to proceed on the footing that the order dated 14.06.1979 passed by the Slum Tribunal had attained finality.

8. Mr. Dani relied upon the notification dated 05.10.1979, which is issued after the decision of the Slum Tribunal dated 14.06.1979 whereby C.T.S.No.191 admeasuring 4507.4 sq.mtrs. is declared as a slum area. The Note appended to that Notification is to the following effect:

“This notification will, however, not be applicable to the properties in respect of which appeals against the aforesaid declaration have been preferred to the Slum Tribunal and are subject to injunction from it or where the declaration have been

set aside by the Tribunal.”

9. A perusal of this Note clearly indicates that the Notification dated 05.10.1979 is not applicable to the properties in respect of which the declaration has been set aside by the Tribunal. Though C.T.S.No.191 admeasuring 4507.4 sq.mtrs. is shown to be declared as a slum area, in view of the Note extracted hereinabove, the said declaration will not be applicable. Mr. Dani tried to contend that plaintiffs have not established grounds of eviction under Sections 15 and 16(1)(g) of the Act. A perusal of paragraph 6 of the appellate Court's order shows that the parties restricted their arguments only on the maintainability of the Suit. In other words, defendant No.1 accepted grounds of eviction made out by the plaintiffs but contended that Suit is not maintainable in view of Section 22 of the Slum Act. A perusal of the points framed by the appellate Court also shows that the question, whether the suit premises falls under the slum area and consequently the Suit is not maintainable in the absence of permission of the Competent Authority under Section 22 of the Slum Act, was framed and was accordingly answered by the appellate Court.

10. In view thereof, it cannot be said that the appellate Court committed any error in holding that the Suit is maintainable. Defendant No.1 cannot be allowed to agitate in this Court that plaintiffs have not made out eviction grounds under Sections 13 and 16(1)(g) having given up the challenge before the appellate Court. Defendant No.2 did not file review before the appellate Court. It is, therefore, not open to the defendant No.1 to agitate this contention after not availing remedy of filing review before the appellate Court. After considering the submissions advanced by the Counsel appearing for the parties, I do not find that Courts below committed any error in passing the impugned orders. The findings recorded by the Courts below are based upon the

evidence on record. It cannot be said that findings are perverse, being based upon no evidence or that they are contrary to the evidence. It also cannot be said that on the basis of the evidence of record, no reasonable or prudent person would have arrived at those findings. Hence, no case is made out for interfering with the impugned orders. Application fails and the same is dismissed.

11. At this stage, Mr. Singh seeks permission to withdraw the amount deposited by the defendant No.1. Mr. Gawankar has no objection.

12. In view thereof, respondent No.1 is permitted to withdraw the amount deposited by the defendant No.1 in the Small Causes Court, unconditionally.

13. At this stage, Mr. Gawankar orally prays for stay of the eviction decree for a period of 8 weeks from today. He states that within 2 weeks from today, applicant and all adult family members residing with him will file usual undertaking in this Court with advance copy to the other side, incorporating therein that,

- (i) they are in possession of the suit premises and nobody else is in possession;
- (ii) they have neither created any third party interest nor parted with possession;
- (iii) they will hereafter neither create third party interest nor part with possession;
- (iv) they will not apply for further extension of time;
- (v) in case they are unable to obtain suitable orders from the higher Court within eight weeks from today, they will vacate and handover vacant and peaceful possession of the suit premises to the respondent No.1.

14. In view thereof, notwithstanding dismissal of C.R.A., subject to the applicant filing undertaking in the aforesaid terms within two weeks from today with advance copy to the other side, eviction decree shall not be executed for a period of eight weeks from today. It is made clear that in case the applicant does not file undertaking within the stipulated period and / or does not get suitable orders within 8 weeks from today from the higher Court, he will handover vacant and peaceful possession of the suit premises to the respondent No.1.

15. All the parties, including the Small Causes Court, to act upon the authenticated copy of this order.

(R. G. KETKAR, J.)

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