

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.118 OF 2018

Meena Chandrakant Isyee @ Meena Hemand
Shimpi ... Applicant
Vs.
Prakash Kashinath Patil and another ... Respondents

Mr. Harshad Inamdar i/b. Mr. D. A. Chimote for Applicant.
Mr. Parag M. Tilak for Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : OCTOBER 05, 2018

P.C. :

Heard Mr. Inamdar, learned Counsel for applicant and Mr. Tilak, 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.'), applicant, hereinafter referred to as 'defendant No.2', has challenged the judgment and decree dated 19.12.2005 passed by the learned Joint Civil Judge, Junior Division, Kalyan in Regular Civil Suit No.525 of 1994 as also the judgment and decree dated 06.06.2017 passed by the learned District Judge-2, Kalyan in Civil Appeal No.98 of 2014. By these orders, the Courts below partly decreed the Suit instituted by respondent No.1, hereinafter referred to as 'plaintiff', and directed defendant No.2 to deliver vacant possession of room No.5 in Shakuntala Chhaya Building at Tukaram Nagar, Ayare Road, Dombivali (E), Taluka Kalyan (for short 'suit premises') to the plaintiff among other directions.

3. Before dealing with the merits of the matter, it is necessary to

consider the background of the case. The plaintiff instituted Suit against defendant No.1 - Hemant Gajanan Shimpi and defendant No.2 (applicant herein). The plaintiff invoked grounds of default, acquisition of suitable alternate residence as also unlawful subletting as contemplated by Sections 12, 13(1)(l) and 13(1)(e) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Act'). After service of the suit summons, both the defendants appeared in the Court and asked for time to file written statement. Defendant No.2 filed Vakalatnama of Advocate M. D. Joshi vide exhibit-16. He sought time for filing written statement on behalf of the defendant No.2. Defendant No.2 did not file W.S. and matter was ordered to proceed without W.S. of both the defendants. By order dated 21.12.1996, the learned trial Judge dismissed the Suit. Aggrieved by that decision, plaintiff preferred Civil Appeal No.35 of 1997. Advocate V. P. Deshmukh appeared for the respondents (defendants). By order dated 07.01.2005, the learned District Judge allowed the appeal and set aside the decree passed by the trial Court. Regular Civil Suit No.525 of 1994 was restored to the file of the trial Court for fresh trial in accordance with law. Both the parties were given liberty to submit their pleadings and adduce their evidence in the trial Court. Both the parties were directed to appear before the trial Court on 23.02.2005.

4. After the remand, defendants did not appear before the trial Court. No written statement was filed. Plaintiff adduced evidence. Defendants did not cross-examine plaintiff's witness as also adduce their evidence. By order dated 19.12.2005, the learned trial Judge decreed the Suit. Aggrieved by that decision, defendant No.2 preferred Civil Appeal No.98 of 2014. By order dated 06.06.2017, the learned District Judge dismissed the appeal. It is against these orders, defendant No.2 has instituted the present C.R.A.

5. In support of this Application, Mr. Inamdar invited my attention to paragraphs 8, 9, 11 and 12 of the plaint. In paragraph 8, plaintiff asserted that defendant No.1 has unlawfully sublet or given on licence the suit premises or has assigned or transferred in some other manner his interest therein in favour of Mrs. Meena Chandrakant Isai (defendant No.2) who pretends to be his wife. He submitted that the learned District Judge referred to paragraph 2 of the written argument filed by the defendant No.2. In that paragraph, defendant No.2 mentioned factum of her marriage with defendant No.1. In paragraph 11, the learned District Judge observed that defendant No.2 did not file any document to suggest that she is married to defendant No.1. In the absence of any document, it is difficult to digest such marital tie mainly because parties are litigating this issue since the year 1994. Defendant No.2 made no attempt to show her marital relationship with the defendant No.1. Defendant No.2 did not file written statement and still she is claiming that she is residing in the suit property on behalf of her husband.

6. Mr. Inamdar submitted that in paragraph 12, the learned District Judge observed that when the defendant No.2 is not a legally wedded wife of the defendant No.1, she cannot claim tenancy rights towards the suit property. He submitted that in view of the limited jurisdiction which the Courts under rent control legislation have, the learned District Judge was not justified in observing that defendant No.2 has failed to establish that she is a legally wedded wife of the defendant No.1. In paragraphs 14 and 15, the learned District Judge held that defendant No.2 has no locus to maintain the appeal. He, therefore, submitted that impugned order passed by the learned District Judge be set aside and the appeal may be restored to the file of the District Court with direction to proceed on the premise that as defendant No.2 is residing in the suit premises and claims to be wife of defendant No.1, she has locus to maintain the appeal.

7. On the other hand, Mr. Tilak supported the impugned orders. He submitted that though opportunity was given to the defendant No.2, even after remand, no W.S. was filed. Defendant No.2 did not cross-examine plaintiff's witness. In short, defendant No.2 did not participate in the trial at all. The learned trial Judge, after considering the material on record, decreed the Suit. He has taken me through the findings recorded by the learned trial Judge.

8. In so far as the criticism made by Mr. Inamdar on the approach of the learned District Judge is concerned, he submitted that the observations made in paragraphs 9, 11 and 12 are in the context of the plaintiff's case that defendant No.1 has unlawfully sublet the suit premises to the defendant No.2. He submitted that after considering the evidence on record, the Courts below have concurrently decreed the Suit, and therefore, no case is made out for interfering with the impugned order.

9. 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 record shows that defendants No.1 and 2 were served with the suit summons. Defendant No.2 filed Vakalatnama of Advocate M. D. Joshi at exhibit-16. At his request for filing W.S., matter was adjourned. As no W.S. was filed, order was passed below exhibit-1 to proceed with the Suit without written statement. Initially, the Suit was dismissed by the learned trial Judge. Aggrieved by that decision, plaintiff preferred appeal. In that appeal, defendants-respondents were represented by Advocate. Upon hearing both sides, by order dated 07.01.2005, the learned District Judge allowed the appeal. The operative part of the order reads thus,

“

ORDER

The appeal is hereby allowed with costs.

The judgment and decree dated 21.12.1996 in Reg. Civil Suit No.525/1995 and Misc. Application No.56/1994 is hereby set aside.

The Reg. Civil Suit No.525/1994 and Misc. Application No.56/1994 is hereby remanded back to the trial Court for fresh trial according to Law.

The trial Court is directed to readmit the suit and Misc. Application No.56/1994 in original numbers.

Both parties are at liberty to submit their pleadings and adduce their evidence in the trial Court.

Both parties are directed to appear before the trial Court on 23.2.2005.”

10. A perusal of the above extracted portion shows that parties were given liberty to submit their pleadings and adduce their evidence before the trial Court. Both the parties were directed to appear before the trial Court. It is not in dispute and is rather a matter of record that even thereafter, defendant No.2 did not file written statement. After remand, only plaintiff appeared but defendants and their Advocate did not appear to contest the Suit. On 19.11.2005, plaintiff filed application exhibit-27 on the ground that since long, defendants have not appeared as directed by the learned District Judge, and therefore, the Suit may be tried ex-parte. Accordingly, on the same day, the learned trial Judge passed order below exhibit-1 and application exhibit-27 for Suit to proceed without written statement of the defendant as per the earlier order dated 03.02.1996. Plaintiff filed affidavit of examination-in-chief at exhibit-28. Defendants No.1 and 2 did not cross-examine the plaintiff. Defendant No.2 though filed Miscellaneous Application No.56 of 1994 for fixation of standard rent, she failed to adduce evidence in that application. The said application was dismissed in default. After considering the sole testimony of the plaintiff, the learned trial Judge

decreed the Suit. In paragraph 10, the learned trial Judge noted that defendant No.1-tenant had acquired alternate suitable accommodation. He had been allotted residence at 407, Mangal Deep Co-operative Housing Society, Near Central Bank, Ghanshyam Gupte Road, Dombivli (E), Taluka Kalyan where he shifted along with his bag and baggages in January 1990. His testimony also revealed that defendant No.1 inducted defendant No.2 unlawfully in the suit premises. The learned trial Judge held that plaintiff has made out a case and accordingly decreed the Suit. Aggrieved by that decision, defendant No.2 preferred appeal. After noting the development of the matter, the learned District Judge dealt with the written arguments submitted by the defendant No.2. The learned District Judge observed that if at all defendant No.2 claims to be wife of defendant No.1, she would have shifted along with the defendant No.1 to the premises at 407, Mangal Deep Co-operative Housing Society, Near Central Bank, Ghanshyam Gupte Road, Dombivli (E), Taluka Kalyan. She had made no attempt to establish marital relations with the defendant No.1 though she claims to be wife of the defendant No.1. Mere residence of defendant No.2 along with defendant No.1 tenant cannot confer any tenancy rights in her favour. The learned District Judge noted that the sole testimony of the plaintiff was not challenged. The learned District Judge also noted that defendant No.2 admitted that tenancy agreement was executed between the plaintiff landlord and defendant No.1. It is, therefore, necessary for her to explain in what capacity, she was residing in the suit property.

11. In paragraphs 14 and 15, the learned District Judge held that defendant No.2 has no locus standi to institute the appeal. Mr. Inamdar submitted that the learned District Judge was not justified in dismissing the appeal on the ground that defendant No.2 has no locus standi to institute the appeal more so when she was made defendant No.2 in the Suit. At first blush the submission appears to be attractive but after close

analysis of the record, I do not find any merit. The observations made by the learned District Judge are in the context of the case of unlawful subletting by defendant No.1 in favour of defendant No.2 as also acquisition of suitable alternate residence by defendant No.1 vis-a-vis the rights claimed by the defendant No.2 in the suit premises. As defendant No.2 has failed to establish her rights on the basis of her claim that she is wife of the defendant No.2, the learned District Judge held that plaintiff has established the ground of unlawful subletting. It is in that context, the observations have to be appreciated. Even if this observation is excluded from consideration, the fact remains that defendant No.2 has not participated in the trial even after remand, though she was given opportunity.

12. In view thereof, I do not find that the Courts below committed any error in passing the impugned orders. During the course of hearing, I suggested to Mr. Inamdar that subject to the defendant No.2 handing over possession of the suit premises to the plaintiff, this Court will set aside the impugned orders and restore the Suit to the file of the learned trial Judge and defendant No.2 will be permitted to file written statement. She will also be permitted to cross-examine plaintiff's witness and adduce her evidence. Plaintiff will be restrained from creating third party interest and parting with possession of the suit premises. Mr.Inamdar, upon taking instructions from the defendant No.2, who is present in the Court, submitted that she is not ready and willing to handover possession.

13. In the light of the above discussion, no fault can be found with the orders of the Courts below. Defendant No.2 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 No.2 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. Merely because on the evidence on record, another view is possible, that itself is no ground for invocation of powers under Section 115 of the C.P.C. In view thereof as also for the reasons recorded earlier, no case is made out for interfering with the impugned orders. Hence, Application fails and the same is dismissed.

(R. G. KETKAR, J.)

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