

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

CIVIL REVISION APPLICATION NO.509 OF 2019

[COVERTED FROM WRIT PETITION NO.4188 OF 2019]

Usha Krishnarao Bhokare and Another	]	Applicants
Vs.		
Appa Wamanrao Mule	]	
(deceased through legal heirs)	]	
1A. Vikas Appa Mule and others.	]	Respondents

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Ms. Ayodhya Patki, Advocate for the Petitioners.

Mr. V. Shastry i/b M.S. Athalye, Advocate for Respondents.

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CORAM : R.G. KETKAR, J.

DATE : 25th JULY, 2019.

P.C.

Heard Ms. Patki, learned Counsel for the petitioners and Mr. Shastry, 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, hereinafter referred to as 'defendants' have challenged the judgment and decree dated 23rd August, 2012 passed by the learned Civil Judge Junior Division, Wai in Regular Civil Suit No.281 of 1997 as also the judgment and decree dated 31st July, 2018 passed by the learned Ad-hoc District Judge-2, Satara in Regular Civil Appeal No.419 of 2012. By these orders, the Courts below decreed the suit instituted by the respondents, hereinafter referred to as 'plaintiffs' and directed the defendants to handover vacant and peaceful possession of the suit premises, more particularly described in paragraph 1 of the plaint to the plaintiffs.

3. The plaintiffs instituted suit against the defendant, under section 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Act'), inter alia, contending that the defendants are wilful defaulters. The suit premises was let out to Krushnaji Tukaram Bhokare by Vaman Mahadeo Mule at monthly rent of Rs.8/-. After death of Krushnaji Tukaram Bhokare, suit premises came in possession of the defendants. Neither father of the defendants nor the defendants were regularly paying rent to the plaintiffs. Father of the defendants had paid rent till 31st July, 1968. The defendants are in arrears of rent for 337 months. The plaintiff had issued notice demanding Rs.2696/- (337 months x Rs.8/- per month) being the arrears of rent. The defendant remitted the amount by money order which was accepted by plaintiff No.1 under protest. The defendants thereafter did not pay rent for more than six months and thus became defaulter.

4. The plaintiffs further contended that there are in all 25 members in the family. They are residing in C.T.S No.1441. It has become difficult and inconvenient for them to reside in C.T.S No.1441. The plaintiffs gave details of the properties in occupation of plaintiff No.1, 7 to 10 and 2 to 6. The plaintiffs further came with the case that children of plaintiff No.1, 7 to 10 and 2 are taking education. They require a separate bedroom and space for their study. Plaintiff No.3 was just married and required the separate room. Plaintiff No.4 also got married and required a separate bedroom. Ladies in the family and children require separate space. Thus, the plaintiffs claimed possession on the

ground of reasonable and bona fide requirement under section 13 (1) (g) of the Act. The plaintiffs further contended that the defendants have acquired suitable alternate accommodation. Defendant No.2 purchased property No.9 and 10 out of Gat No.7 in Songirwadi, Wai. Thus, the defendants have acquired suitable alternate accommodation as contemplated by section 13 (1) (l) of the Act.

5. The defendants filed written statement at Exhibit 17 resisting claim of the plaintiffs. They denied all adverse allegations made in the plaint. The defendants came with the case that the plaintiffs have several properties and, therefore, need pleaded by the plaintiffs is neither reasonable nor bona fide. The defendants contended that the plaintiffs never demanded possession of the suit premises before notice dated 11th February, 1997. The notice was replied on 24th February, 1997 and their father had paid rent through money order to the plaintiffs. They denied that they are wilful defaulters.

6. The defendants further contended that the plaintiffs have several properties. They have demolished old building situate in C.T.S No.1441 in Raviwar Peth, Wai and constructed three storied building for the residence of their families. Thus, the plaintiffs do not require the suit premises reasonably and bona fide.

7. The defendants filed additional written statement at Exhibit 85, inter alia, contending that plaintiffs No.3 and 5

purchased Flats No.7 and 8 admeasuring 26.44 square meters each in the newly constructed building in C.T.S No.1432/2/1 and have shifted there. The plaintiffs have premises for residence in C.T.S No.749/1/4.

8. On the basis of the pleadings of the parties, the learned trial Judge framed the necessary issues. The parties adduced evidence. After considering the evidence on record, the learned trial Judge decreed the suit. The learned trial Judge held that the plaintiffs failed to prove that the defendants are defaulters in payment of rent; that the plaintiffs proved that they reasonably and bona fide require the suit premises; the plaintiffs proved that the defendants have acquired suitable alternate accommodation and that greater hardship will be caused to the plaintiffs than the defendants, in case eviction decree is not passed.

9. Aggrieved by this decision, the defendants preferred appeal. By order dated 31st July, 2018, the learned District Judge dismissed the appeal. The learned District Judge held that the plaintiffs proved that the defendants are wilful defaulters in payment of rent. The plaintiffs have proved that their requirement is reasonable and bona fide. The plaintiffs proved that they will suffer greater hardship if eviction decree is refused and that the defendants have acquired suitable alternate residence. It is against these orders, the defendants have instituted the present Application.

10. In support of this Application, Ms. Patki strenuously contended that the Courts below committed serious error in passing eviction decree under section 13 (1) (l) of the Act. She submitted that even accepting the case of the plaintiffs at the highest, it can be said that defendant No.2 Santosh Bhokare has acquired suitable alternate residence. Defendant No.1 has not acquired any premises. She submitted that defendant No.1 cannot claim any right in the premises acquired by defendant No.2. Defendant No.1 has no legal right to occupy the premises of defendant No.2. In support of this submission, she relied on the decision of **Anandi D. Jadhav Vs. Nirmala Ramchandra Kore, AIR 2000 SC 1386.**

11. Ms. Patki further submitted that the plaintiffs have several properties at their disposal. She has taken me through the evidence adduced by the parties. She submitted that the plaintiffs have constructed six blocks in C.T.S No.1441. That apart, the plaintiffs are owners of C.T.S No.712. The defendants have produced extracts substantiating their plea that the plaintiffs have several premises which will satisfy their requirement. She, therefore, submitted that the application requires consideration.

12. On the other hand, Mr. Shastry supported the impugned orders. He submitted that after appreciating the evidence on record, the Courts below have concurrently decreed the suit. He submitted that in so far as ground of acquisition of alternate suitable accommodation as contemplated by section 13 (1) (l) of the Act is concerned, it has come on record that

defendant No.1 married to one Krushnarao Ganpatrao Ghaitade. Marriage is not dissolved. He further submitted that in fact written statement was filed by the defendants and on behalf of the defendants, defendant No.1 entered into the witness box. It, therefore, cannot be said that defendant No.1 has no legal right to reside in the premises acquired by defendant No.2. He, therefore, submitted that no case is made out for interfering with the impugned orders.

13. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. As mentioned earlier, the plaintiffs have instituted suit invoking grounds under sections 12, 13 (1) (g) and 13 (1) (l) of the Act. The learned trial Judge declined to pass decree under section 12 of the Act. As against this, the learned District Judge decreed the suit on all the three grounds arrears of rent (section 12), reasonable and bona fide requirement (section 13 (1) (g) and acquisition of alternate suitable accommodation (section 13 (1) (l)).

14. In so far as decree under section 13 (1) (g) of the Act is concerned, the plaintiffs came with the case that they are in all 25 members in their family. The learned trial Judge considered this ground from paragraphs 18 to 23. In paragraph 18, the learned trial Judge has referred to the members in the family of the plaintiffs. In paragraph 19, the learned trial Judge dealt with evidence of D.W.1 at Exhibit 27. In paragraph 20, the learned trial Judge noted that in the year 1997, there were 26 persons in the

family of the plaintiffs. Old House in C.T.S No.1441 was demolished and new house was constructed. In the newly constructed building, there are two flats on each floor having two bedrooms, kitchen and hall. In paragraph 22, the learned trial Judge noted that D.W.1 did not deny that Flats in C.T.S No.1441 are insufficient for the residence of the members of the family.

15. In so far as question of comparative hardship is concerned as also acquisition of suitable residence of the defendant is concerned, the learned trial Judge considered this issue from paragraphs 24 to paragraphs 31. In paragraph 30, the learned trial Judge observed that defendant No.1 has not given any justifiable reason for not residing along with defendant No.2. Not only that, defendant No.1 though married is not co-habiting with her husband when there was no divorce between the parties. In paragraph 31, the learned trial Judge also noted that no documentary evidence is produced by defendant No.1 to substantiate that divorce has taken place between her and her husband. Thus, no reasonable cause is made out by defendant No.1 for not cohabiting with her husband. The story put forth by defendant No.1 is not reliable in view of evidence on record.

16. In so far as the District Court is concerned, the learned District Judge has considered ground of default from paragraphs 24 to 34. The learned District Judge observed that in pursuance of the notice dated 11th February, 1997, the defendants remitted Rs.2696/- representing arrears of 337 months @ Rs.8/- per month. There is no evidence on record to show that any rent

was paid after 31st July, 1968 or was attempted to be paid. In paragraph 34, the learned District Judge noted that the defendants have not paid or deposited the rent month to month. In view of section 12 (3) (b), the compliance of payment of regular rent is mandatory. The learned District Judge held that the defendants are wilful defaulters and accordingly passed eviction decree under section 12 of the Act.

17. In so far as ground of reasonable and bona fide requirement under section 13 (1) (g), comparative hardship and acquisition of alternate suitable residence under section 13 (1) (l) is concerned, these grounds are considered from paragraphs 35 to 67. The learned District Judge, after re-appreciating the entire evidence on record, confirmed the findings on the grounds under section 13 (1) (e), 13(1) (g) and 13 (1) (l) of the Act.

18. Thus, after appreciating the evidence on record, the Courts below have concurrently decreed the suit under sections 13 (1) (g) and 13 (1) (l) of the Act. In so far as the decree under section 12 of the Act is concerned, for the reasons recorded in paragraph 34, it cannot be said that the learned District Judge committed any error in decreeing the suit under section 12 of the Act. The defendants are not in a position to demonstrate that the findings recorded by the learned District Judge are perverse being based on no evidence or that on the basis of material on record, no reasonable or prudent person would have come to the conclusion arrived by the learned District Judge. The defendants are not in a position to show that the findings are contrary to the

evidence on record. Merely because on the basis of the material on record, another view is possible that, by itself, is no ground for exercising the powers under section 115 of C.P.C. In the result, the Civil Revision Application fails and the same is dismissed.

19. At this stage, Ms. Patki orally prays for continuation of ad-interim order dated 15th February, 2019 for a period of 12 weeks from today. Mr. Shastry opposes the prayer. Having regard to the fact that the defendants intend to challenge this order in the higher forum, request made by Ms. Patki is reasonable. Hence, notwithstanding dismissal of C.R.A, ad-interim order granted on 15th February, 2019 shall remain in for a period of 12 weeks from today subject to the defendants and all the adult family members residing with them filing usual undertaking in this Court within four weeks from today, after giving advance copy to the other side 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 interest nor parted with possession of the suit premises;
- [c] they will hereafter neither create third party interest nor part with possession of the suit premises;
- [d] within four weeks from today, the defendants will deposit the entire arrears in this Court, under due intimation in writing to the learned Counsel for the plaintiffs.

[e] in case they are unable to obtain suitable orders from the higher Court within 12 weeks from today, they will hand over vacant and peaceful possession of the suit premises to the respondents;

It is expressly made clear that in case the undertaking is not filed in the aforesaid terms within four weeks from today and/or in case applicants commit breach of any of the conditions of the undertaking, ad-interim order shall stand vacated without further reference to the Court. Order accordingly.

20. **List the C.R.A for reporting compliance on 20th August, 2019.**

[R.G. KETKAR, J.]