

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL REVISION APPLICATION NO.179 OF 2018

M/s. Ray Velvet Industries	]	
through its Sole Proprietor	]	
Shri Rayappan Chettiyar	]	Applicant

Vs.

M/s. Kala Silk Factory	]	
A Partnership Firm registered	]	
under the Indian Partnership Act, 1932	]	
through its Partner Dinesh Gandhi	]	Respondent

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Mr. Vivek Salunke i/b Sneha G. Sanap, learned Counsel for the Applicant.

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CORAM : R.G. KETKAR, J.

DATE : 29TH JANUARY, 2019.

P.C:

Heard Mr. Salunke, learned Counsel for the applicant 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' has challenged the judgment and decree dated 4th January, 2014 passed by the learned Civil Judge, Senior Division, Thane in Regular Civil Suit No.1525 of 2001 as also the judgment and decree dated 2nd January, 2018 passed by the learned Ad-hoc District Judge-3, Thane in Civil Appeal No.49 of 2015. By these orders, the Courts below decreed the suit instituted by the

respondent, hereinafter referred to as “plaintiff” under section 15 of the Maharashtra Rent Control Act, 1999 (for short 'Act').

3. The plaintiff had issued demand notice dated 7th November, 2000 (Exhibit 16) to the defendant claiming arrears of rent for the period from April, 1998 to 7th November, 2000 @ Rs.1121/- per month. On 14th September, 2001, the plaintiff instituted the suit for recovery of possession of Industrial Shed admeasuring 3108 square feet situate at Kala Silk Compound, Kashi Village, Post Mira, Dist. Thane 410 104 (for short 'suit premises') and claimed arrears of Rs.34,751/- as on the date of issuing the demand notice. Initially, ex-parte decree was passed on 25th February, 2004. The plaintiff filed Regular Darkhast No.44 of 2004 on 17th June, 2004. The defendant filed Misc. Application No.518 of 2004 for setting aside ex-parte decree. By order dated 23rd September, 2008, the learned trial Judge rejected the application. Aggrieved by that decision, the defendant preferred Misc. Civil Appeal No.159 of 2008. It was dismissed on 11th August, 2011. Aggrieved by these orders, the defendant instituted Writ Petition No.7833 of 2011 in this Court. By order dated 23rd September, 2011, Writ Petition was allowed. The suit was restored to the file of Civil Judge, Senior Division, Thane. The defendant was directed to pay costs of Rs.20,000/- to the plaintiff. The defendant was also permitted to file written statement. In pursuance thereof, the defendant filed written statement at Exhibit 25. He admitted that agreed rent was Rs.1121/- excluding municipal taxes and permitted increases. He denied that he was irregular in payment of rent and was defaulter. He also denied that arrears are to the tune of Rs.34,751/- from April, 1998 till the date of issuance of demand notice i.e till 7th November, 2000.

4. On the basis of pleadings of the parties, the learned trial Judge framed necessary issues and the parties adduced evidence. By order dated 4th

January, 2014, the learned trial Judge decreed the suit. Aggrieved by that decision, the defendant preferred appeal which was also dismissed by the learned District Judge on 2nd January, 2018. Aggrieved by this decision, the defendant has instituted the present C.R.A.

5. In support of this application, Mr. Salunke reiterated the contentions that were advanced before the Courts below. He submitted that during the course of execution proceedings, the defendant had deposited Rs.1,54,150/- vide receipts at Exhibit 35, 35-A, 35-B and 35-C. He submitted that the Courts below, however, came to the conclusion that the demand notice was served on the defendant and that he did not comply the requirements of section 15 of the Act. He, therefore, submitted that the application requires consideration.

6. I have considered submissions advanced by Mr. Salunke. I have also perused the material on record. The Courts below have recorded that the agreed rent between the parties was Rs.1121/- per month exclusive of municipal taxes and permitted increases. Mr. Salunke submitted that the demand notice was not served on the defendant. In paragraph 12, after considering the evidence adduced by the parties, the learned trial Judge held that demand notice dated 7th November, 2000 at Exhibit 16 issued by the plaintiff was duly received by the defendant. In view thereof, I do not find any merit in the submission of Mr. Salunke that demand notice was not served on the defendant.

7. The learned District Judge also noted that during pendency of the appeal, the defendant did not pay any amount. In paragraph 10, the learned District Judge noted that the defendant deposited the amount in execution proceeding at the first on 2nd November, 2004 and lastly on 25th March, 2010.

Mr. Salunke has invited my attention to those receipts. A perusal of those receipts shows that the defendant deposited Rs.85,861/- on 2nd November, 2004, Rs.10,089/- on 25th April, 2005. Rs.8200/- on 23rd November, 2005 and Rs.50,000/- on 25th March, 2010. The learned District Judge also noted that the defendant did not adduce any evidence as regards payment of rent thereafter. During the course of arguments also, the learned District Judge raised query about payment/deposit of rent, taxes and permitted increases. On behalf of the defendant, it was admitted that no single pai was paid towards rent, taxes and permitted increases. Thus, the Courts below after appreciating the evidence on record have concurrently held that the defendant was in arrears of rent and was not regular in making the payment. It is significant to note that during pendency of th appeal, the defendant did not deposit any amount and for the first time deposited Rs.1,54,150/- in the execution proceedings.

8. In view of the aforesaid discussion, I do not find that the Courts below committed any error in passing the impugned order. The defendant is not in a position to demonstrate that the findings recorded by the Courts below are perverse being based on no evidence or that on the basis of the material on record, no reasonable or prudent person would have come to the conclusion arrived at by the Courts below. The defendant is 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 powers under section 115 of the C.P.C. No case is made out for interfering with the impugned orders. Hence, application fails and the same is dismissed.

[R.G. KETKAR, J.]