

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.37 OF 2019
IN
CIVIL REVISION APPLICATION NO.405 OF 2018
AND
CIVIL REVISION APPLICATION NO.363 OF 2018

Surendra Ratansi Savla ... Applicant
In the matter between
Usha Sureshchandra Bhatt and others ... Applicants
Vs.
Surendra Ratansi Savla ... Respondent
Mr. J. G. Damani for Applicant.
Mr. Jaydeep Deo for Respondent.

CORAM : R. G. KETKAR, J.
DATE : APRIL 1, 2019

P.C. :

Heard Mr. Damani, learned Counsel for the applicant and Mr. Deo, learned Counsel for the respondent at length.

2. This Application is taken out by Surendra Ratansi Savla, hereinafter referred to as 'defendant', inter alia praying for the following relief:

“(a) That order dt.21.12.2018 passed in review application no.553 of 2018 with common order dated 09/08/2018 passed in C.R.A.No.405 of 2018 and C.R.A.363 of 2018 to the extend of parties have arrived at consensus in filing respective undertaking to be set aside and both CRA be restored to file and reheard and decided on merits as per provision of 16(1)(1) r/w 16(6) a to d(i) to (v) of Maharashtra Rent Control Act 1999 and let the landlords provide premises adm.609.27 sq.ft. (carpet) to applicant in 'A' wing and executed the agreement of permanent alternate accommodation in lieu of existing premises in respect to be provided in 'A' wing of building to be constructed on said property and further to filed the undertaking according to aforesaid provision of law.”

3. C.R.A.No.363 of 2018 was instituted by the opponents in this Application, hereinafter referred to as 'plaintiffs'. C.R.A.No.405 of 2018 was instituted by the defendant. C.R.A.No.363 of 2018 was instituted by the plaintiffs challenging the judgment and decree dated 02.05.2018 passed by the Appellate Bench of the Small Causes Court at Bombay, Bandra Branch in (A-1) Appeal No.38 of 2016 to the extent of holding that defendant is entitled to area of 609.27 sq. ft. in 'A' Wing. C.R.A. No.405 of 2018 was instituted by the defendant challenging the judgment and decree passed by the Courts below under Section 16(1)(i) of the Maharashtra Rent Control Act, 1999 (for short 'Act').

4. Civil Revision Applications were heard at length on 07.08.2018 and were adjourned to 09.08.2018 for passing orders. On behalf of the plaintiffs, upon taking instructions, it was stated that plaintiffs are ready and willing to allot flat admeasuring 609.27 sq. ft. carpet area in "A" Wing either on 4th, 5th or 6th floor to the defendant on tenancy basis, subject to obtaining Occupation Certificate from the Corporation. It was further submitted that plaintiffs will submit revised plans to the Corporation within four weeks. Within one week, as and by way of stop-gap and temporary arrangement, the plaintiffs will hand over flat No.203 admeasuring 609.27 sq. ft. carpet area in "C" Wing to the defendant.

5. On behalf of the plaintiffs, it was also stated that they will offer a flat admeasuring 609.27 sq. ft. carpet area in "A" Wing within approximately three years from the date of the order, subject to obtaining Occupation Certificate from the Corporation. The assurance was given on behalf of the plaintiffs that after the revised plans are sanctioned, inspection will be given to the defendant within one week from obtaining sanction from the Corporation. The statement was made on behalf of the plaintiffs that undertaking on the above lines will be

filed within one week with advance copy to other side.

6. On behalf of the defendant, upon taking instructions, Mr.Damani stated that within one week from offering flat No.203 in “C” Wing, the defendant will shift there and hand over possession of the suit premises to the plaintiffs within two weeks and that defendant is ready and willing to accept the allotment of flat in “A” Wing admeasuring 609.27 sq. ft. carpet area either on 4th, 5th or 6th floor on tenancy basis; that the defendant will hand over vacant and peaceful possession of flat No.203 in “C” Wing within two weeks from the plaintiffs offering to occupy flat in “A” Wing and he will accordingly shift. The statement of Mr. Damani that within one week, the defendant will file undertaking on the aforesaid lines in this Court was recorded. In view of the consensus arrived between the parties, Civil Revision Applications were disposed of in terms of the statements and were ordered to be listed for 'reporting compliance' on 20.08.2018.

7. In pursuance of order dated 09.08.2018, plaintiffs have filed undertaking dated 16.08.2018 in this Court. The defendant, however, did not file the undertaking. The defendant filed C.A.No.553 of 2018 in this Court under Section 114 read with Order XLVII, Rule 1 of C.P.C. seeking review of order dated 09.08.2018 and for deciding the C.R.A. on merits as per the provisions of Section 16(1)(i) read with Section 16(6) of the Act and also for direction to the plaintiffs to provide premises admeasuring 609.27 sq.ft. carpet area to the defendant in 'A' Wing and file undertaking to that effect as per the provisions of law.

8. C.A. No.553 of 2018 was disposed of on 21.12.2018. In paragraph 13 of that order, it was recorded that in pursuance of the order dated 09.08.2018, C.R.As. were listed for reporting compliance on

20.08.2018. On that date, at the request of learned counsel for the applicant, namely the defendant, both the matters were adjourned to 27.08.2018 for reporting compliance. On 24.08.2018, C.A.No.553 of 2018 was taken out by the defendant for review of the order dated 09.08.2018. Civil Application was heard on 27.08.2018 and Mr.Damani, on instructions of Ms Nilam Savla, daughter of the defendant, deleted the assertions made in paragraph 8 of the Application. The Application was thereafter listed for orders on 11.09.2018 at 3.00 p.m. The matter was thereafter placed on 18.09.2018 and was ordered to be listed on 25.9.2018 in the supplementary board. After hearing the parties on 25.09.2018, the application was listed for passing orders on 27.09.2018. As none appeared on behalf of the defendant, it was adjourned for passing orders on 01.10.2018. On 29.09.2018, the defendant made application before the Hon'ble Chief Justice for transferring the proceedings to some other Court. This fact was brought to the notice of the Court on 01.10.2018. In view thereof, hearing of the application was deferred till 15.10.2018 and in the meantime, Registry was to obtain appropriate orders from the Hon'ble Chief Justice. On 15.10.2018, hearing was deferred to 29.10.2018 to enable the Registry to obtain suitable orders. On 29.10.2018, again it was adjourned to 26.11.2018 to enable the Registry to obtain suitable orders from the Hon'ble Chief Justice.

9. In pursuance thereof, on 21.11.2018, the Registry placed the submission before the Hon'ble Chief Justice soliciting orders on the application dated 29.09.2018 made by the applicant. As per the administrative order, the Registry has placed the matter before this Court.

10. It appears that the application was placed before the Hon'ble Mr.

Justice M. S. Sonak on 03.12.2018. As that was an application for review, M. S. Sonak, J. directed the Registry to place the matter before the Bench which passed the order dated 09.08.2018. In pursuance thereof, the matter was placed before this Court on 10.12.2018. None appeared for the defendant. The defendant was present in person. At his request, it was adjourned to 17.12.2018. On 17.12.2018, none appeared for the defendant, however, the defendant was present in person. The applicant sought adjournment till 22.12.2018. It was, however, not acceded to and was ordered to be kept at 3:00 p.m. on 21.12.2018 under the caption of 'for dismissal'.

11. The matter was heard on 21.12.2018 at 3.00 p.m. Adjournment was sought on the ground that arguing Counsel was in difficulty. It was noted that perusal of the entire record shows that the defendant is somehow not willing to proceed with the matter before this Court and is delaying the matter on one pretext or the other. It was also noted that order under review was passed by consent of the parties. In pursuance thereof, plaintiffs had filed undertaking. The defendant did not file undertaking. Even till date, defendant has not filed the undertaking. A perusal of the prayers in the application shows that the defendant is praying for allotting premises admeasuring 609.27 sq.ft. (carpet area) in 'A' Wing. That was also precisely provided in the order dated 09.08.2018. In view thereof, Civil Application seeking review of the order dated 09.08.2018 was dismissed. Oral application for stay of the order for a period 8 weeks was also rejected.

12. I have already extracted the prayer made in the present Civil Application. By prayer clause (a), defendant is praying for recalling the order dated 21.12.2018 passed in Civil Application No.553 of 2018 with common order dated 09.08.2018 passed in C.R.A.No.405 of 2018 and

C.R.A.No.363 of 2018 to the extent of parties having arrived at consensus in filing respective undertakings and for restoring, re-hearing and deciding the same on merits as per Section 16(1)(i) read with Section 16(6) of the Act. The defendant further prayed for direction to the plaintiffs to provide premises admeasuring 609.27 sq.ft.(carpet area) to the defendant in 'A' Wing and execute the agreement for permanent alternate accommodation in lieu of existing premises to be provided in 'A' Wing of the building to be constructed on the property and further to file the undertaking as per the provisions of law.

13. In support of this Application, Mr. Damani submitted that order dated 09.08.2018 deserves to be recalled as there are several ambiguities. The order dated 09.08.2018 recorded that plaintiffs will allot flat admeasuring 609.27 sq. ft. carpet area in “A” Wing either on 4th, 5th or 6th floor to the defendant on tenancy basis. Thus, no specific floor is mentioned in the order. He further submitted that no agreement is executed by the plaintiffs in favour of the defendant offering permanent alternate accommodation. Unless and until such agreement is executed, the defendant will not hand over possession of the suit premises to the plaintiffs.

14. Mr. Damani further submitted that even the order dated 09.08.2018 records that subject to the plaintiffs obtaining Occupation Certificate from the Corporation, they will handover possession of flat offered on the 4th, 5th or 6th floor. Thus, no time limit is stipulated for obtaining Occupation Certificate. This is one more ambiguity.

15. Mr. Damani further submitted that as and by way of stop-gap and temporary arrangement, the plaintiffs were willing to handover possession of flat No.203 admeasuring 609.27 sq.ft. (carpet area) in 'C'

Wing to the defendant. However, plaintiffs have now come with the case of handing over possession of 685 sq.ft. of flats No.203 and 204 in 'C' Wing, and thus, offer is not in tune with the offer recorded in the order dated 09.08.2018.

16. Mr. Damani submitted that defendant is still ready and willing to comply his obligations provided - (i) plaintiffs execute registered agreement for allotment of permanent alternate accommodation; (ii) that they specify on which floor of 'A' Wing, they are offering flat admeasuring 609.27 sq.ft (carpet area); (iii) the time within which plaintiffs will obtain Occupation Certificate and handover possession to the defendant; and (iv) plaintiffs giving inspection of the sanctioned revised plans to the defendant. He, therefore, submitted that Civil Application may be allowed.

17. On the other hand, Mr. Deo submitted that defendant had already filed Civil Application No.553 of 2018 seeking review of order dated 09.08.2018 passed in C.R.A.No.405 of 2018 and C.R.A.No.363 of 2018. That application was dismissed on merits. Thus, the present application made by the defendant is not for restoration of the C.R.As. He submitted that the present application is for review of the orders dated 09.08.2018 and 21.12.2018. In view of Order XLVII, Rule 9 of C.P.C., no application to review order made on application for review can be entertained. He, therefore, submitted that no case is made out for entertaining the said Application. Mr. Deo, upon taking instructions from Mr. Suketu Trivedi, Partner of M/s. Fortune Constructions, states that plaintiffs are offering flat admeasuring 609.27 sq.ft. carpet area on the 4th floor of 'A' Wing. Statement made by Mr. Deo, on instructions, is accepted.

18. I have considered the rival submissions advanced by the learned

Counsel appearing for the parties. I have also perused the material on record. As mentioned earlier, C.R.As. were disposed of on 09.08.2018 in view of the consensus arrived at between the parties. In pursuance thereof, plaintiffs had filed undertaking dated 16.08.2018 in this Court. The undertaking given by the plaintiffs is discussed in detail in the order dated 21.12.2018. As against this, defendant did not file undertaking within one week. Even till date, no undertaking is filed by the defendant. Mr. Deo submitted that instead of offering 609.27 sq.ft. carpet area of flat No.203 in 'C' Wing, plaintiffs are offering flats admeasuring 685 sq.ft. i.e. flats No.203 and 204 in 'C' Wing. Statement made, on instructions, was recorded. As the plaintiffs are offering adjacent flats, namely, flats No.203 and 204 in 'C' Wing, I do not find any merit in the submission of Mr. Damani that offer of the plaintiffs is not in tune with the offer recorded in the order dated 09.08.2018. In fact, defendant is getting excess area namely, as against carpet area of 609.27 sq.ft., plaintiffs are offering 685 sq.ft. carper area. Thus, this is the lame excuse of the defendant for not handing over possession of the suit premises to the plaintiffs.

19. The order dated 21.12.2018 also recorded the attempts made by the defendant in delaying the matter by filing application for transfer and when that request was turned down, even thereafter, the defendant did not proceed to argue the application and went on applying for time. Despite showing indulgence on various occasions, defendant misused the indulgence. This constrained the Court to dismiss Civil Application No.553 of 2004 on merits. In so far as the contention of Mr. Damani that plaintiffs have to enter into agreement is concerned, though he invited my attention to Section 16(6) of the Act, he could not substantiate that contention. Order XLVII, Rule 9 of C.P.C. lays down that no application to review an order made on an application for a review shall be entertained. The present Application is taken out for recalling the order

dated 21.12.2018 passed in Review Application No.553 of 2018. The defendant has also prayed for recalling the order dated 09.08.2018 passed in C.R.A.No.405 of 2018 and C.R.A.No.363 of 2018. Thus, though the earlier Application was dismissed, repeated attempts are made by the defendant for the self same relief. In view thereof, present Application taken out by the defendant for recalling order dated 21.12.2018 as also order dated 09.08.2018 thereby restoring Civil Revision Applications cannot be entertained. The defendant has successfully avoided to handover possession of the suit premises to the plaintiffs even after disposal of the Applications on 09.08.2018 till date.

20. Even a perusal of the reliefs claimed in the Application shows that ultimately defendant wants premises admeasuring 609.27 sq.ft. carpet area in 'A' Wing. At the cost of repetition, the order dated 09.08.2018 records that plaintiffs have agreed to provide 609.27 sq.ft. carpet area in 'A' Wing. Thus, though the relief is granted to the defendant, still, present application is taken out for the self-same relief. In my opinion, the present Application is nothing but abuse of process of Court as also abuse of process of law. Mr. Deo strenuously contended that Application may be disposed of by imposing exemplary costs on the defendant. Though I find merit in the submission of Mr. Deo, I refrain from imposing costs on the defendant as I am dismissing the Application. Hence, Application fails and the same is dismissed.

(R. G. KETKAR, J.)