

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.180 OF 2019

Jivanbi @ Jiganbi Mahamad Sayyad ... Applicant
Vs.
Dr. Sou. Sunita Sachin Patil and another ... Respondents

Mr. Bhooshan R. Mandlik for Applicant.
Mr. Swaroop M. Karade for Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : APRIL 24, 2019

P.C. :

Heard Mr. Mandlik, learned Counsel for the applicant and Mr.Karade, 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 Jivanbi @ Jiganbi Mahamad Sayyad, hereinafter referred to as 'obstructionist', has challenged the judgment and order dated 30.08.2018 passed by the learned 9th Joint Civil Judge, Junior Division, Kolhapur below exhibit-28 in Regular Darkhast No.103 of 2017 as also the judgment and order dated 14.11.2018 passed by the learned District Judge-1, Kolhapur in Regular Civil Appeal No.238 of 2018. By these orders, the Courts below rejected the application exhibit-28 taken out by the obstructionist under Order XXI, Rule 97 of C.P.C.

3. Respondent No.1, hereinafter referred to as 'plaintiff', had instituted R.C.S.No.367 of 2011 against the respondent No.2- Jigarbi Sikandar Sayyad (for short 'defendant') invoking ground under Section 16(1)(g) of the Maharashtra Rent Control Act, 1999 (for short 'Act'). The defendant filed written statement at exhibit-12 inter alia contending that Suit is bad for non-joinder of necessary party. The defendant contended

that obstructionist is a tenant. The plaintiff has not impeaded the tenant. The Suit, therefore, suffers from non-joinder of necessary party. By order dated 27.02.2015, the learned trial Judge decreed the Suit. Aggrieved by this decision, defendant preferred Regular Civil Appeal No.131 of 2015 before the District Court, Kolhpaur. By order dated 28.02.2017, the learned Principal District Judge dismissed the Appeal. Aggrieved by these decisions, defendant instituted C.R.A.No.405 of 2017 in this Court. By order dated 27.06.2018, C.R.A. was dismissed. It is not in dispute that defendant did not challenge the said order till date.

4. When the plaintiff went for execution of the decree, obstructionist filed application at exhibit-28 in July 2018 under Order XXI, Rule 97 of C.P.C. inter alia contending that she is a tenant of the suit premises. As she was not impeaded in the Suit, eviction decree passed against the defendant is not binding on her. By order dated 30.08.2018, the learned trial Judge rejected the application. Aggrieved by that order, obstructionist preferred appeal, which was dismissed on 14.11.2018. It is against this order, obstructionist has instituted the present Petition.

5. In support of this Application, Mr. Mandlik submitted that the eviction decree passed against the defendant is not binding on the obstructionist. He invited my attention to paragraph 2 of the plaint. In paragraph 2, plaintiff asserted that the original owner / landlord had inducted obstructionist, who is mother-in-law of the defendant, as a tenant. He submitted that the said objection was specifically raised by the defendant in the written statement. The defendant specifically contended that obstructionist is the tenant and as the plaintiff did not implead obstructionist, the Suit is liable to be dismissed on the ground of non-joinder of necessary party. Though the said contention was specifically raised, the learned trial Judge did not deal with this aspect.

6. Mr. Mandlik invited my attention to paragraph 39 of the District Court judgment dated 28.02.2017. In paragraph 39, the learned Principal District Judge observed that in the Municipal Assessment Record for the year 2003-04, obstructionist (mother-in-law of the defendant) was shown in possession of two rooms. In the Municipal Assessment Record for the year 2011-12, the defendant has been shown to have been in possession of one room admeasuring 13' x 13' sq.ft. The defendant admitted in no uncertain terms that her mother-in-law recorded her name in the Municipal Assessment extract as a tenant in possession. In view thereof, the entries in the Municipal Assessment Records were changed.

7. Mr. Mandlik invited my attention to the application exhibit-28 filed by the obstructionist, and in particular paragraphs 5 to 9 to contend that obstructionist acquired knowledge about passing of eviction decree in favour of the plaintiff only in the month of June when the decree-holder along with some third party came to the suit premises in the month of June and called upon her to vacate the premises, failing which they will demolish the premises and obtain possession. In paragraph 6, obstructionist contended that she acquired knowledge about filing of Regular Darkhast No.103 of 2007 only when Sadik Sayyad, grand son of the obstructionist informed her the said fact. The obstructionist, therefore, made enquiries with the defendant and acquired knowledge in the month of June 2018 about passing of the eviction decree in Suit filed by the plaintiffs. He, therefore, submitted that Petition requires consideration.

8. On the other hand, Mr. Karade supported the impugned orders. He submitted that in paragraph 1 of the plaint, plaintiffs specifically asserted that though the original owner / landlord had inducted

obstructionist Jivanbi @ Jiganbi presently in the Municipal Assessment Records of Municipal Corporation of City of Kolhapur (for short 'Corporation'), name of the defendant is recorded as a tenant. The defendant is in possession of the suit premises. He submitted that this aspect was considered by the learned Principal District Judge in paragraph 39 of the order dated 28.02.2017. The defendant did not agitate the said contention before this Court in C.R.A.No.405 of 2017. After considering the objections raised by the obstructionist, the learned trial Judge rejected the application. He has invited my attention to the findings recorded by the learned trial Judge in paragraphs 8 to 10 as also the findings recorded by the learned District Judge in paragraphs 9 to 11. In paragraph 11, the learned District Judge observed that obstructionist is trying to unnecessarily drag the proceeding without there being any merit. Mr. Karade further states that after filing of this application, obstructionist has filed separate Suit for declaration that the eviction decree passed in R.C.S.No.367 of 2011 is not binding on her. During the pendency of that Suit, she had also taken out application under Order XXI, Rule 26 of C.P.C. for staying eviction decree passed in R.C.S.No.367 of 2011. He submitted that no case is made out for invocation of powers under Section 115 of C.P.C.

9. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. The matter was heard on 16.04.2019. In paragraph 4, it was observed that after perusing the impugned orders, prima facie, it is evident that the applicant is not found to be a tenant in respect of the suit premises and the Courts below have held that the applicant / obstructionist is trying to drag the proceedings without there being any merit. In view thereof, the parties were directed to address on the next date of hearing as to why contempt notice should not be issued against

the applicant for obstructing execution of the decree as also for passing order appointing the Court Receiver to dispossess whosoever is found in possession of the suit premises unless the applicant makes a statement as to within what time, she will hand over vacant and peaceful possession of the suit premises to the respondent. Mr. Mandlik, on instructions, stated that obstructionist is not ready and willing to handover vacant and peaceful possession of the suit premises to the plaintiff.

10. The only contention advanced by the obstructionist is that she is the tenant in respect of the suit premises. Her daughter-in-law (defendant) was made party. She was not aware of the pendency of the Suit, pendency of the appeal as also filing of C.R.A. by the defendant. It is no doubt true that in paragraph 2 of the plaint, plaintiff asserted that original owner / landlord had inducted obstructionist as a tenant. The plaintiff thereafter has asserted that in the Municipal Assessment extract of Corporation, defendant's name is recorded as a tenant and defendant is in possession of the suit premises. It is material to note that the defendant and the obstructionist are residing in the suit premises. It is inconceivable that defendant will not disclose filing of the Suit against her as also her non-impleadment in the Suit. No explanation worth the name is given by the obstructionist for not filing application for impleadment before the trial Court. Equally, no explanation is given as to why obstructionist did not file appeal after obtaining leave to file appeal challenging the eviction decree passed by the trial Court. Equally, no explanation is given as to why the obstructionist did not challenge the decree passed by the Courts below by filing C.R.A. in this Court after obtaining leave to file C.R.A. as she was not impleaded. That apart, this contention was specifically dealt with by the learned Principal District Judge in paragraph 39, which reads thus,

“39. Before parting with the Judgment, two short points are required to be answered. It was the case of the

defendant that, she was in possession of two room premises totally admeasuring 443 sq.ft. It was a thing of past. True, in the municipal assessment record for the year 2003/2004 mother-in-law of the defendant was shown in possession of two rooms. Whereas in the Municipal Assessment record (Exh.45) for the year 2011-2012 the defendant has been shown to have been in possession of one room admeasuring 13 x 13 sq.ft. The defendant has admitted in no uncertain terms that her mother-in-law recorded her name in the municipal assessment extract as tenant in possession. Thereafter the entries in the Municipal Assessment extract were changed. The change took place after the municipal authorities paid visit to the premises and observed the factual situation. The defendant was found in possession of only one room admeasuring 13 x 13 sq.ft. i.e. suit premises. Moreover, the defendant herself has admitted in her oral evidence that the premises of whatever measurement her mother-in-law had possessed have now been in her possession. Her mother-in-law was not keeping well. She, therefore, got recorded her daughter-in-law's name (D.W.1) to the Municipal assessment extract in the capacity as tenant in possession of the suit premises. The defendant, therefore, now cannot be heard to say that she was in fact in possession of the premises admeasuring 443 sq.ft. and her mother-in-law Jeevanbi is necessary party to the Suit and she being not before the Court in the capacity as a defendant, the suit suffers for non-joinder of the necessary parties.”

11. Thus, the learned Principal District Judge considered Municipal Assessment Record at exhibit-45 for the year 2011-12 where defendant was shown to be in possession. That apart, defendant also admitted that her mother-in-law (the obstructionist) recorded defendant's name in the Municipal Assessment extract as a tenant in possession. Thus, the obstructionist herself had recorded name of defendant as a tenant in the Municipal Assessment Record at exhibit-45. It is, therefore, not now open to the obstructionist to contend that she is the tenant and not the defendant. The learned Principal District Judge also noted that defendant herself admitted in oral evidence that the premises of whatever measurement her mother-in-law had possessed are now in her

possession. As her mother-in-law was not keeping well, she got recorded her daughter-in-law's name in the Municipal Assessment extract in the capacity as tenant in possession of the suit premises. The learned Principal District Judge, therefore, observed that defendant cannot be heard to say that she was in fact in possession of the premises admeasuring 443 sq.ft. and her mother-in-law Jeevanbi i.e. obstructionist is necessary party to the Suit and she being not before the Court in the capacity as a defendant, the Suit suffers from non-joinder of the necessary parties.

12. Aggrieved by this decision, defendant preferred C.R.A.No.405 of 2017 in this Court. After hearing the parties at length, by order dated 27.06.2018, C.R.A. was dismissed. It is not in dispute that defendant did not challenge that order in higher Court till date. Thus, the said order, as on date, has attained finality. It is in this context, one has to consider the objection raised by the obstructionist in exhibit-28. In paragraph 8, the learned trial Judge has dealt with the contention of the obstructionist that she is the tenant and the Suit suffers from non-joinder of necessary parties. The learned trial Judge extracted paragraph 39 of the Appellate Court judgment dated 28.02.2017. In paragraph 10, the learned trial Judge further observed that there is nothing on record to show that obstructionist is currently in possession of the suit property. It was further observed that executing Court cannot go behind the decree.

13. In so far as the judgment of the District Court is concerned, the learned District Judge has considered this aspect in paragraph 9. In paragraph 9, it was observed that name of the defendant was entered into record of rights as tenant. At the time of filing of the Suit, name of the defendant was recorded in the Record of Right as a tenant. The defendant contested the Suit filed by the plaintiff on merits and the Suit

was decreed. In paragraph 10, the learned District Judge noted that due to inability of obstructionist, defendant continued to be a tenant in the suit property. They are residing together. The contention of the obstructionist that due to dispute, they are not on talking terms with each other and therefore, she was not aware about the litigation and decision therein, does not appear to be probable one. No prudent person will consider this fact to be true that since many years, litigation is going on and one of the family members is not aware about the same when they are residing together. The learned District Judge, therefore, did not accept the contention of the obstructionist that she had no knowledge of the litigation. In paragraph 11, the learned District Judge noted that issue of necessary party was decided on merits in the appeal and the said order was maintained in C.R.A. The learned District Judge, therefore, observed that obstructionist is trying to delay the proceeding without there being any merit.

14. After considering the material on record, I do not find that the Courts below committed any error in passing the impugned orders. That apart, Mr. Karade submitted that after filing of the C.R.A., obstructionist has also filed substantive Suit for declaration that the decree passed in R.C.S.No.367 of 2011 is not binding on her and has taken out application under Order XXI, Rule 26 of C.P.C. for stay of the eviction decree.

15. In my opinion, the obstructionist is interfering with the course of administration of justice. Section 2(c) of the Contempt of Courts Act, 1971 defines the expression “criminal contempt” to mean the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which-

- (i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or
- (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or
- (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;

16. Prima facie, I am satisfied that obstructionist is interfering and / or obstructing the administration of justice and is liable to be proceeded for committing criminal contempt. In view thereof, I deem it appropriate to issue suo motu notice to the obstructionist as to why action under the Contempt of Courts Act, 1971 be not initiated against her, returnable on 19.06.2019. As the obstructionist has raised totally frivolous objections, it is also just and convenient to appoint Receiver under Order XL with all enabling powers to dispossess whosoever is found in possession of the suit premises by taking police assistance, if required. Respondent No.1-plaintiff shall deposit Rs.15,000/- in this Court as per Rule 597 of the Bombay High Court (Original Side) Rules within one week from today. The police officials attached to Laxmi Police Station, Kolhapur shall extend full co-operation for implementation of this order.

17. All parties including Police officials attached to Laxmi Police Station, Kolhapur, to act upon the authenticated copy of this order.

18. Civil Revision Application is dismissed with no order as to costs.

(R. G. KETKAR, J.)