

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 142 OF 2019

Abhay Murlidhar Tilak	...Applicant
<i>Versus</i>	
Suresh Raghunath Potdar	...Respondent

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Mr. Rajesh S. Datar, Advocate for the Applicant.
Mr. Vijay Vasant Nene, Advocate for the Respondent.

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CORAM : R. G. KETKAR, J.

DATE : 19th JUNE, 2019

P.C.

1. Heard Mr. Rajesh Datar, learned counsel for the applicant and Mr. Vijay Nene, learned counsel for the respondent, at length.
2. By this application under Section 115 of the Code of Civil Procedure, the applicant, hereinafter referred to as the 'defendant', has challenged the judgment and decree dated 2.1.2012 passed by the learned IInd Joint Civil Judge, Junior Division at Kalyan in Regular Civil Suit No.282/1998 as also the judgment and decree dated 11.12.2018 passed by the learned Ad-hoc District Judge-1, Kalyan in Regular Civil Appeal No.130/2012. By these orders, the Courts below decreed the suit instituted by the respondent, hereinafter referred to as the 'plaintiff', under Section 13(1)(c) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, 'Act') and directed the defendant to

handover vacant and peaceful possession of room No.15, situate on the first floor of the building known as 'Matru-Smriti', Jijai Nagar, Sant Namdev Path, Dombivali (East), Taluka – Kalyan, District – Thane (for short, 'suit premises').

3. The plaintiff instituted suit for recovery of possession of the suit premises invoking the grounds under Sections 12 and 13(1)(c) of the Act. In paragraph-9, the plaintiff alleged that the defendant is causing nuisance and annoyance to the plaintiff, his family members and other tenants of the plaintiff. Because of the behavior of the defendant, the lady residents of 'Matru-Smriti' building lodged criminal complaints at Ram Nagar Police Station, Dombivali on 19.4.1998 and 27.6.1998. The activities of the defendant especially with the lady residents in the building are very objectionable and serious. The plaintiff is receiving frequent complaints from the tenants of the building that the defendant is causing nuisance and annoyance to them.

4. The defendant filed written statement denying the assertions of causing nuisance and annoyance. On the basis of the pleadings of the parties, the learned trial Judge framed the necessary issues. The plaintiff entered the witness box and reiterated the contentions raised as regards the ground of nuisance and annoyance. He was cross-examined by the defendant. The defendant also entered the witness box and was cross-examined by the plaintiff. The learned

trial Judge, after appreciating the evidence on record, decreed the suit only under Section 13(1)(c) of the Act.

5. Aggrieved by that decision, the defendant preferred appeal which was dismissed by the learned District Judge. It is against these orders, the defendant has instituted present C.R.A.

6. In support of this application, Mr. Datar submitted that the plaintiff has not established the ground under Section 13(1)(c) of the Act. He did not examine the lady residents who had filed complaints against the defendant. He further submitted that the defendant had instituted suit for recovery of construction loan amount paid to the plaintiff. That suit was decreed. The plaintiff did not challenge that order. The present suit is counter blast to the suit instituted by the defendant. He further submitted that the lady residents who had made complaints against the defendant have vacated the building and are no longer residing in the building where the suit premises is situate. As the plaintiff has not established causing of nuisance and annoyance, the Courts below were not justified in passing the eviction decree.

7. On the other hand, Mr. Nene has invited my attention to the findings recorded by the Courts below. In paragraph-9, the learned trial Judge has reproduced portion of the complaint dated 19.4.1998 at Exhibit-37. He submitted that the defendant also admitted in his cross-examination about filing of the complaints against him by the lady

residents of the building. He submitted that after considering the evidence on record, the Courts below have concurrently decreed the suit under Section 13(1)(c) of the Act. He, therefore, submitted that no case is made out for interfering with the impugned orders.

8. 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, in paragraph-9 of the plaint the plaintiff specifically asserted that three lady residents in the building had lodged criminal complaints with Ram Nagar Police Station, Dombivali (E) on 19.4.1998 and 27.6.1998.

9. The learned trial Judge has considered the ground of nuisance from paragraphs-7 to 9. In paragraph-9, the learned trial Judge observed that the testimony of PW-1 Suresh is corroborated by the testimony of PW-2 Sunita, wife of PW-1. PW-2 Sunita has corroborated the testimony of PW-1 Suresh in respect of the complaint dated 19.4.1998 bears thumb impression/signature of Pournima Kale, Sushila Singh and herself in respect of keeping balcony closed in which the water pump is kept from 16.4.1998 to 19.4.1998. In her cross-examination, she deposed that Sushila Parasnath Singh and Pournima Vasudev Kale are not residing in Matru-Smruti building any more. The learned trial Judge also extracted portion of the complaint dated 19.4.1998 at Exhibit-37.

10. Insofar as the District Court is concerned, the learned District Judge has considered this ground from paragraphs No.8 to 12. The learned District Judge has affirmed the findings recorded by the learned trial Judge. In paragraph-9, the submission on behalf of the plaintiff that the defendant has outraged modesty of women and that he intentionally put the motor for pumping water behind lock and used to leave the building thereby caused great inconvenience to the residents of the building, was recorded.

11. In paragraph-10, the learned District Judge noted that the defendant admitted in cross-examination that other tenants, namely, Pournima Kale, Sushila Singh, had lodged complaint against him in police station. In the complaint dated 19.4.1998 at Exhibit-37, three instances were noted. These instances were not challenged by the defendant in the cross-examination. The allegations in the complaint at Exhibit-37 were in respect of inconvenience caused to the women residents during the use of their lavatory and the fact that the defendant used to threaten the women residents is not challenged. The fact that police had summoned the defendant and admonished him is admitted in the cross-examination of PW-1.

12. The learned District Judge also noted that the tenants who complained against the defendant are no longer residents of Matru-Smruti building and, therefore, non examination of these witnesses is

not fatal to the case of the plaintiff. In paragraph-11, the learned District Judge noted that the allegations made in the complaint at Exhibit-37 are very serious and amounts to outraging modesty of women and thus the plaintiff has proved that the defendant was causing nuisance and annoyance to the neighbours and adjoining tenants as provided under Section 13(1)(c) of the Act.

13. Mr. Datar submitted that the plaintiff did not examine the complainants. It is no doubt true that the plaintiff did not examine the complainants in those cases in the present suit. However, it is material to note that the defendant during his cross-examination admitted that other tenants, namely, Pournima Kale, Sushila Singh had lodged complaint against him in police station. In view thereof and also having regard to the fact that the plaintiff has produced the complaints on record, I do not find any merit in the submission of Mr. Datar that non-examination of the complainants in criminal cases is fatal to the suit.

14. For the reasons recorded by the Courts below, I do not find that the defendant has made out any case for invocation of powers under Section 115 of C.P.C. The defendant is 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. The defendant is 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 basis of evidence on record another view is possible, that itself is no ground for invocation of powers under Section 115 of C.P.C. No case is made out for invocation of powers under Section 115 of C.P.C. Hence, Civil Revision Application fails and the same is dismissed with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)