

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL REVISION APPLICATION NO.244 OF 2019

Bombay Spiritual Centre	]	Applicant
Vs.		
Jayant Amratlal Jobanputra and another	]	Respondents

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Mr. Gauraj Shah a/w Shaunak Gokhale i/b Chitnis Vaithy and Co., Advocate for the Applicant.

Mr. P.K. Dhakephalkar, Senior Advocate a/w Mr. Jaydeep Deo, Advocate for Respondents No.1 and 2.

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CORAM : R.G. KETKAR, J.

DATE : 6th JUNE, 2019.

P.C.

Heard Mr. Shah, learned Counsel for the applicant and Mr. Dhakephalkar, learned senior Counsel for respondents No.1 and 2 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 'defendants' have challenged the order dated 21st November, 2018 passed by the learned trial Judge below Exhibit 10 in T.E. & R Suit No.5 of 2018. By that order, the learned trial Judge rejected the application made by the defendants under Order-VII, Rule-11 (d) of the C.P.C for rejection of the plaint.

3. In support of this application, Mr. Shah has invited my attention to paragraphs 3,6,8,10 and 12 of the plaint as also application made by the defendants under Order-VII, Rule-11 of the C.P.C. He submitted that the

plaintiffs came with the case that after coming into operation of the Maharashtra Rent Control Act, 1999 and after termination of defendants' tenancy, the defendants are not entitled to protection of any Rent Control Legislation. He submitted that the plaintiffs have instituted suit purportedly under section 41 of the Presidency Small Causes Courts Act, 1882 and though the Small Causes Court has no jurisdiction to entertain and try the suit, the plaintiffs have attempted to bring the suit in the jurisdiction of the Small Causes Court. The defendants are lawful tenants and are in peaceful occupation and possession of the suit premises as tenants since last more than 70 years. The learned trial Judge, therefore, should have rejected the plaint as it is barred by law as contemplated under Order-VII, Rule-11 (d) of the C.P.C.

4. Mr. Shah further submitted that in case, the Court is not inclined to entertain C.R.A, the defendants may be given 6 weeks time to file written statement. He assures that the defendants will not seek further extension of time for filing the written statement.

5. On the other hand, Mr. Dhakephalkar supported the impugned order. He submitted that while considering the application under Order-VII, Rule-11 of the C.P.C., the Court has to consider the only assertions made in the plaint and cannot consider the defence set up by the defendants. He further submitted that the plaintiffs have instituted the suit principally on the ground that after coming into operation of the Maharashtra Rent Control Act, 1999, after termination of the defendants' tenancy, they are not entitled to any protection under the Rent Control Legislation. If ultimately after a full-fledged trial, the Court comes to the conclusion that the defendants are entitled to protection of the Rent Control Legislation, the Court would be at liberty to dismiss the suit.

6. In so far as request made by Mr. Shah to grant six weeks time for filing the written statement is concerned, Mr. Dhakephalkar strenuously opposed that prayer and submitted that it may be left to the trial Court. He, therefore, submitted that no case is made out for interfering with the impugned order.

7. 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 the suit mainly on the ground that after termination of defendants' tenancy and after coming into operation of the Maharashtra Rent Control Act, 1999, the defendants are not entitled to protection of the Rent Control Legislation. It is also not in dispute that the defendants have filed application under Order-VII, Rule-11 of C.P.C for rejection of the plaint. It is settled principle of law that while considering the application for rejection of the plaint under Order-VII, Rule-11, the Court has to only consider the averments made in the plaint and not the defence set up by the defendants.

8. In view thereof as also for the reasons recorded in paragraph 16 of the impugned order, I do not find that any case is made out for interfering with the impugned order.

9. In so far as opposition of Mr. Dhakephalkar for granting six weeks time for filing written statement is concerned, a perusal of the record indicates that the suit is instituted on or about 22nd December, 2017. The defendants have filed application under Order-VII, Rule-11 on or about 20th February, 2018. The impugned order is passed on 21st November, 2018 and the present C.R.A is filed on 1st March, 2019. In view thereof, I find that the defendants did not take unduly long time for filing the application for rejection of the

plaint as also filing C.R.A in this Court. Hence, the request made by Mr. Shah for giving six weeks time for filing written statement is reasonable. The defendants shall file written statement within six weeks from today and shall serve copy thereof on the other side during this period. Mr. Shah assures that the defendants will not seek further extension of time for filing written statement. Statement made by Mr. Shah is recorded. Subject to above, the C.R.A fails and the same is dismissed with no order as to costs. Order accordingly.

[R.G. KETKAR, J.]