

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.474 OF 2017

Kulbhushan Shripal Tikke	...	Applicant
Vs.		
Vinod Sindhunath Kadre	...	Respondent

Mr. Abhijit M. Adagule for Applicant.
Mr. Swaroop Karade for Respondent.

CORAM : R. G. KETKAR, J.
DATE : JULY 25, 2019

P.C. :

Heard Mr. Adagule, learned Counsel for the applicant and Mr. Karade, learned Counsel for the respondent at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicant, hereinafter referred to as 'plaintiff', has challenged the judgment and decree dated 26.02.2015 passed by the learned trial Judge in R.C.S.No.677 of 2013 as also the judgment and decree dated 27.01.2017 passed by the learned District Judge in Regular Civil Appeal No.113 of 2015.

3. The plaintiff has instituted Suit against the respondent, hereinafter referred to as 'defendant', for recovery of possession of premises admeasuring 270 sq.ft. situate on the ground floor in C.S.No.660A/1, Shahupuri, Kolhapur (for short 'suit premises') inter alia on the ground that defendant is a monthly tenant. The monthly rent is Rs.500/-. The defendant has failed to pay rent, municipal taxes since January 1997. The defendant has committed default in payment of rent for more than six months. On 05.04.2013, plaintiff issued notice. On 22.04.2013, defendant gave reply enclosing therewith cheque for Rs.38,000/ The

cheque was dishonoured. The plaintiff, therefore, instituted Suit for recovery of possession of the suit premises on the ground that the defendant is a willful defaulter as contemplated by Section 15 of the Maharashtra Rent Control Act, 1999 (for short 'Act') and for arrears of rent of Rs.39,500/-.

4. The defendant resisted the Suit by filing written statement. He admitted that monthly rent is Rs.500/-. However, he denied that he committed default in making payment of rent. He further denied that he was liable to pay taxes as alleged by the plaintiff. It was further contended that plaintiff accepted the rent of the suit premises from January 1997 to January 2007 and the said fact is acknowledged by the plaintiff in R.C.S.No.83 of 2007. The plaintiff however, never issued rent receipts. The defendant, therefore, contended that he is not liable to pay rent prior to 2007. The defendant had also instituted R.C.S.No.83 of 2007 as the plaintiff disconnected electricity and telephone connection of the suit premises.

5. On the basis of pleadings of the parties, the learned trial Judge framed the necessary issues. The learned trial Judge partly decreed the Suit and held that plaintiff is entitled to withdraw the amount of Rs.18,000/- from the total amount deposited by the defendant and that further remaining amount of Rs.63,500/- deposited by the defendant in the Court after appeal period is over. The learned trial Judge declined to pass decree under Section 15 of the Act on the ground that in the notice dated 05.04.2013 at exhibit-19, plaintiff did not make demand of the arrears of rent. Aggrieved by this decision, plaintiff preferred Appeal. By order dated 27.01.2017, the Appellate Court has dismissed the appeal.

6. Mr. Adagule submitted that the Courts below committed serious error in holding that in the notice dated 05.04.2013, demand was not

raised. He further submitted that since August 2015, defendant has neither deposited nor paid the rent of the suit premises.

7. On the other hand, Mr. Karade submitted that the Courts below, after considering the notice dated 05.04.2013 recorded a concurrent finding of fact that demand was not raised in the notice. He also invited my attention to paragraph 16 of the District Court judgment. In paragraph 16, the learned District Judge has referred to decision of ***Sitaram Narayan Shinde Vs. Ibrahim Ismail Rais, 2005 (1) Mh.L.J.35*** where this Court held that as the notice did not contain a demand, the notice cannot be construed as a notice of demand. He further submitted that from January 2017, defendant was transmitting the amount by Money Order. However, plaintiff has refused to accept the same. He assures that within four weeks from today subject to adjustment of the amount deposited / paid by the defendant, he will deposit entire arrears upto and inclusive of 31.07.2019 in the trial Court under intimation in writing to the Advocate for the plaintiff. Mr. Karade submitted that pending the present proceedings, plaintiff has also instituted Suit on 28.03.2017 for recovery of possession of the suit premises invoking the ground of reasonable and bonafide requirement and the said Suit is pending.

8. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. With the assistance of the learned Counsel appearing for the parties, I have perused the notice dated 05.04.2013 issued by the plaintiff, which is at exhibit-19. After perusing the notice, I find that the Courts below rightly came to the conclusion that no demand was raised in the notice. As the plaintiff did not raise any demand in the notice dated 05.04.2013, the Courts below were justified in declining to pass

decree under Section 15 of the Act. This is fundamental flaw in the Suit. In fact, operative part of the trial Court's order shows that the learned trial Judge has permitted plaintiff to withdraw Rs.81,500/- deposited / paid by the defendant (clauses 2 and 3 of the operative part of the order). That apart, Mr. Karade submitted that defendant was transmitting rent by Money Order from January 2017 and the same was refused by the plaintiff. He assures that within four weeks from today, subject to adjustment of the amount deposited / paid by the defendant, he will deposit entire arrears upto and inclusive of 31.07.2019 in the trial Court under intimation in writing to the Advocate for the plaintiff. Upon deposit, the applicant / plaintiff is at liberty to withdraw the amount unconditionally.

9. In view thereof, no case is made out for invocation of powers under Section 115 of C.P.C. Application fails and the is dismissed.

10. All parties including the trial Court to act upon the authenticated copy of this order.

(R. G. KETKAR, J.)

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