

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL REVISION APPLICATION[STAMP] NO.9090 OF 2019

Haji Ahmed Haji Razak (since deceased)	]	
Iqbal Haji Ahmed Kudia (the heir of	]	
Defendant No.1)	]	Applicant
Vs.		
M/s. Goolamali Hasanjee	]	Respondent

WITH

CIVIL REVISION APPLICATION[STAMP] NO.9078 OF 2019

Ismail Siddiq Gajiyani	]	Applicant
Vs.		
M/s. Goolamali Hasanjee	]	Respondent

WITH

CIVIL REVISION APPLICATION[STAMP] NO.9082 OF 2019

Tofiq Haroon Plasticwala	]	Applicant
Vs.		
M/s. Goolamali Hasanjee	]	Respondent

WITH

CIVIL REVISION APPLICATION[STAMP] NO.9112 OF 2019

Yakub Ibrahim Kudiya	]	Applicant
Vs.		
M/s. Goolamali Hasanjee	]	Respondent

WITH

CIVIL REVISION APPLICATION[STAMP] NO.9121 OF 2019

Anwar Adamji Naviwala	]	
(since deceased)	]	
Afzal Anwar Naviwala	]	Applicant
Vs.		
M/s. Goolamali Hasanjee	]	Respondent

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Mr. K.D. Jha, learned Counsel for the Applicants in all the C.R.A's.
 Mr. A.N. Nasikwala, learned Counsel for the Respondent in all the C.R.A's.

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CORAM : R.G. KETKAR, J.

DATE : 23rd APRIL, 2019.

P.C.

Heard Mr. Jha, learned Counsel for the applicants and Mr. Nasikwala, learned Counsel for the respondent in all the C.R.A's at length.

2. By these applications under section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C'), the applicants, hereinafter referred to as “defendants” have challenged the judgments and decrees dated 19th August, 2014 passed by the learned Judge, Court of Small Causes at Mumbai as also the judgments and decrees dated 18th February, 2019 passed by the Appellate Bench of the Court of Small Causes at Mumbai. By order dated 19th August, 2014, the learned trial Judge decreed the suits only under section 15 of the Maharashtra Rent Control Act, 1999 (for short 'Act') and confirmed respondent's, hereinafter referred to as “plaintiff” *de facto* possession of the suit premises as *de jure* possession. The learned trial Judge directed the defendants to remove their articles lying in the suit premises. Aggrieved by these decisions, the defendants preferred Appeals before the Appellate Bench of the Court of Small Causes, Mumbai. By orders dated 18th February, 2019, the Appellate Court confirmed the trial Court's decree. It is against these orders, the defendants have preferred these C.R.A's.

3. As common questions of law and facts arise in these C.R.A's, the same can conveniently be disposed of by this common order. In order to appreciate the controversy between the parties, facts from C.R.A. [STAMP] No.9090 of 2019 are taken into consideration.

4. In support of this application, Mr. Jha submitted that the suit property was taken for re-development. He submitted that in or about 1991, re-development process started. Before re-development of the suit property, it was mutually agreed between the parties to adjust entire arrears of rent. He invited my attention to the affidavit of examination-in-chief of D.W.1-Iqbal Haji Ahmed Kudia and in particular paragraph 10. He submitted that statements made in paragraph 10 of affidavit of examination-in-chief of D.W.1-Iqbal Haji Ahmed Kudia remained unchallenged.

5. Mr. Jha submitted that the plaintiff had fraudulently obtained ex-parte decree on 6th July, 2002. The plaintiff had filed first execution application in the year 2003. The plaintiff, however, withdrew the execution proceedings. After lapse of nearly six years, second execution application was filed by the plaintiff. On 26th June, 2010, the plaintiff executed decree and obtained possession by breaking open the lock. On 20th July, 2010, the defendant filed application for setting aside ex-parte decree. The trial Court dismissed the application. By order dated 26th March, 2012, the Appellate Court set aside the ex-parte decree and permitted the defendant to file written statement. The plaintiff was directed to restore possession of the suit premises to the defendants. Aggrieved by this decision, the plaintiff filed C.R.A in this Court. Mr. Jha has invited my attention to the order dated 5th August, 2013 passed by this Court (Coram: S.V. Gangapurwala, J.) in C.R.A. No.262 of 2013 as also the order dated 21st December, 2013 passed by this Court in C.R.A. No.421 of 2013.

6. Mr. Jha further submitted that after re-development was completed, the defendants were inducted in the respective premises in the year 1992-1993. After executing the decree, the plaintiff destroyed the rent receipts and other documents substantiating the claim of the defendants that they were

regularly paying the rent. He invited my attention to the cross-examination of P.W.1-Zuzer M. Olia. He submitted that because of the negligence on the part of the litigant and his Advocate, the defendant should not suffer. One more opportunity deserves to be granted to the defendant to clear the entire arrears of rent. He submitted that the application requires consideration.

7. On the other hand, Mr. Nasikwala supported the impugned orders. He submitted that the property was taken for re-development in the year 1991 and after completion of the re-development project, the defendant was inducted in the year 1992-1993 in the respective premises. He submitted that the demand notice dated 8th May, 2000 at Exhibit 21 was issued to the defendant. The only contention raised by the defendant was that demand notice was not served. He further submitted that the case that after executing the decree, the plaintiff destroyed the documents of the defendant is not even pleaded in the written statement. He submitted that even after service of the suit summons, no application was made by the defendant for depositing the entire arrears of rent. He submitted that after appreciating the evidence on record, the Courts below have decreed the suit under section 15 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 learned Counsel for the parties. I have also perused the material on record. As mentioned earlier, the Courts below have decreed the suit only under section 15 of the Act. In so far as the judgment of the trial Court is concerned, the learned trial Judge has considered this aspect from paragraphs 18 to 24. A perusal of the discussions in these paragraphs shows that the defendant contended that the demand notice dated 8th May, 2000 at Exhibit 21 was not served. The learned trial Judge observed that the demand notice was

dispatched to the defendant at the address of the suit premises. D.W.1-Iqbal Haji Ahmed Kudia admitted this fact in the cross-examination. He admitted the address of defendant No.1 mentioned in the notice, R.P.A.D envelop and receipt of Under Certificate of Posting. Thus, the plaintiff has served demand notice to the defendant at the address of the suit premises which address is admitted by of D.W.1-Iqbal Haji Ahmed Kudia.

9. The learned trial Judge referred to section 27 of The General Clauses Act, 1897 and section 114 of the Indian Evidence Act, 1872. The learned trial Judge also referred to the decision of **P.T. Thomas Vs. Thomas Job, AIR 2005 Supreme Court Cases 3575**. In paragraph 22, the learned trial Judge observed that notice dated 8th May, 2000 at Exhibit 21 was sent on the address of the suit premises which address is admitted and confirmed by D.W.1. Once, the notice is addressed to the defendant at the correct address, it is presumed that it is duly served unless otherwise proved. The presumption is rebuttable. The defendant has not rebutted the presumption by achieving admissions in the cross-examination of P.W.1. The defendant has not adduced any cogent documentary evidence to rebut the presumption. Mere denial of service of notice by the defendant is not sufficient.

10. In paragraph 23, the learned trial Judge referred to the contention of the defendant that notice dated 8th May, 2000 Exhibit 21 is not as per the provisions of section 15 (2) of the repelled Act. In paragraph 24, the learned trial Judge noted that the defendant has not paid arrears of rent after April, 1988 and failed to pay rent from April, 1988 to 30th June, 2000 i.e for a period of 146 months. The learned trial Judge accordingly held that the plaintiff is entitled to decree of eviction under section 15 of the Act.

11. In so far as decision of the Appellate Court is concerned, the Appellate Court has considered this ground from paragraphs 21 to paragraphs 28 and re-appreciating the entire evidence on record, confirmed the finding recorded by the learned trial Judge. After perusing the material on record, I do not find that the Courts below committed any error in decreeing the suit under section 15 of the Act.

12. Mr. Jha submitted that there was understanding between the parties as regards adjustment of arrears of rent. I do not find any merit in this submission. As mentioned earlier, re-development project was completed in the year 1992-1993. Thus, the understanding, if any, was during the period when the property was under re-development. The Courts below have found that even after the defendant was inducted in the suit premises, no rent was paid till 30th June, 2000.

13. Mr. Jha further submitted that the defendant was regularly paying rent to the plaintiff. After the plaintiff fraudulently executing the decree, he destroyed the documents. No such plea was taken in the written statement. That apart, even after service of the suit summons, no application was made by the defendant showing readiness and willingness to comply the requirements of section 15 of the Act.

14. In view thereof, I do not find that the Courts below committed any error in decreeing the suit. As mentioned earlier, defendant had filed C.R.A No.262 of 2013 in this Court. This Court noted that the plaintiff had executed decree and is in possession of the suit property. The Court observed that as the plaintiff has already taken possession, his possession shall be treated as *de facto* possession and defendant shall be deemed to be in *de jure* possession. Such arrangement shall be subject to the outcome of the suit. The plaintiff was

restrained from creating third party interest in the suit property in whatsoever manner. The learned trial Judge decreed the suit and confirmed the plaintiff's *de facto* possession as *de jure* possession.

15. In the light of the aforesaid discussion, no case is made out for invocation of powers under section 115 of the C.P.C. The defendants are not in a position to demonstrate that the findings recorded by the Courts below are perverse being based on no evidence or that on the basis of the material on record, no reasonable or prudent person would have come to the conclusion arrived at by the Courts below. The defendants are not in a position to show that the findings are contrary to the evidence on record. Merely because on the basis of the material on record, another view is possible that, by itself, is no ground for exercising the powers under section 115 of C.P.C. In the result, the Civil Revision Applications fail and the same are dismissed.

16. At this stage, Mr. Jha submits that injunction restraining the plaintiff from creating third party interest in the suit property in whatsoever manner may be continued for a period of 12 weeks from today. Mr. Nasikwala opposes the prayer on the ground that the plaintiff has filed affidavit dated 15th April, 2019 enclosing therewith three registered leave and licence agreements in respect of Rooms No. 6A to 6D. He further states that Room No.6 E is in possession of the plaintiff and the plaintiff will maintain status-quo in respect of Room No.6E.

17. In view thereof, injunction which was operating in pursuance of the orders passed by this Court in C.R.A No.262 of 2013 and 421 of 2013 shall remain in force for a period of 12 weeks from today. Order accordingly.

[R.G. KETKAR, J.]