

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

CIVIL REVISION APPLICATION NO.238 OF 2019

Dadasaheb Appa Madane	]	Applicant
Vs.		
Ramkali wd/o Sitaram Khushwaha	]	Respondent

WITH

CIVIL REVISION APPLICATION [STAMP] NO.9753 OF 2019

Pandurang Dharma Gavhankar	]	
(since deceased)	]	
Sharda Pandurang Gavhankar and others.	]	Applicants
Vs.		
Ramkali wd/o Sitaram Khushwaha & Anr.	]	Respondents

WITH

CIVIL REVISION APPLICATION [STAMP] NO.9770 OF 2019

Shivdhani Vishnu Singh	]	
(since deceased)	]	
Usha Shivdhani Singh and others.	]	Applicants
Vs.		
Ramkali wd/o Sitaram Khushwaha & Anr.	]	Respondents

WITH

CIVIL REVISION APPLICATION [STAMP] NO.9814 OF 2019

Jalinder Baburao Gaikwad	]	Applicant
Vs.		
Ramkali wd/o Sitaram Khushwaha	]	Respondent

WITH

CIVIL REVISION APPLICATION [STAMP] NO.9818 OF 2019

Dashrath Krishnaji Chalke	]	Applicant
Vs.		
Ramkali wd/o Sitaram Khushwaha & anr.	]	Respondents

WITH
CIVIL REVISION APPLICATION [STAMP] NO.9858 OF 2019

Dinkar Vithoba Kudekar	]	Applicant
Vs.		
Ramkali wd/o Sitaram Khushwaha	]	Respondents

WITH
CIVIL REVISION APPLICATION [STAMP] NO.9859 OF 2019

Usha Balkrishna Mule	]	Applicant
Vs.		
Ramkali wd/o Sitaram Khushwaha & anr.	]	Respondents

WITH
CIVIL REVISION APPLICATION [STAMP] NO.9983 OF 2019

P.K. Kotian (since deceased)	]	
Sarojini S. Poojari	]	Applicant
Vs.		
Ramkali wd/o Sitaram Khushwaha	]	Respondent

WITH
CIVIL REVISION APPLICATION [STAMP] NO.9985 OF 2019

Jagannath Anaji Kadam	]	
(since deceased)	]	
Shailaja Jagannath Kadam and others.	]	Applicants
Vs.		
Ramkali wd/o Sitaram Khushwaha	]	Respondent

WITH
CIVIL REVISION APPLICATION [STAMP] NO.9987 OF 2019

Lokya Dooma Poojari	]	
(since deceased)	]	
Vishwanath Dooma Poojari	]	Applicant
Vs.		
Ramkali wd/o Sitaram Khushwaha & Ors.	]	Respondents

WITH
CIVIL REVISION APPLICATION [STAMP] NO.9988 OF 2019

L.G. Kanchan (since deceased)	]	
Nagamma Linga Kanchan and others.	]	Applicants
Vs.		
Ramkali wd/o Sitaram Khushwaha	]	Respondent.....

Mr. G.S. Godbole, Senior Advocate a/w Ms. Shruti Tulpule, Advocate for the Applicants in all the C.R.A's.

Mr. Rajesh S. Datar a/w Dushyant Pagare, Advocate for Respondent No.1 in all the C.R.A's.

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CORAM : R.G. KETKAR, J.

DATE : 25th JUNE, 2019.

P.C.

Heard Mr. Godbole, learned Senior Counsel for the applicants and Mr. Datar, learned Counsel for respondent No.1 in all the C.R.A's, at length.

2. C.R.A. No.238 of 2019 filed by the applicant/defendant takes exception to the judgment and decree dated 21st December, 2013 passed by the learned trial Judge in R.A.E. & R Suit No.802/1732 of 1994 as also judgment and decree dated 2nd March, 2019 passed by the Appellate Bench of the Court of Small Causes at Mumbai in (A-1) Appeal No.266 of 2014. By these orders, the Courts below decreed the suit instituted by the respondent/plaintiff under section 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Act').

3. C.R.A. [Stamp] No.9753 of 2019 filed by the applicants/defendants takes exception to the judgment and decree dated 21st December, 2013 passed by the learned trial Judge in R.A.E. & R Suit No.795/1725 of 1994 as also judgment and decree dated 2nd March, 2019 passed by the Appellate Bench of the Court of Small Causes at Mumbai in (A-1) Appeal No.319 of 2014 and Cross Objection No.18 of 2014. By these orders, the Courts below decreed the suit instituted by the respondent/plaintiff under section 12 of the Act. The Appellate Court dismissed the Cross Objection.

4. C.R.A. [Stamp] 9770 of 2019 filed by the applicants/defendants takes exception to the judgment and decree dated 21st December, 2013 passed by the learned trial Judge in R.A.E. & R Suit No.798/1728 of 1994 as also judgment and decree dated 2nd March, 2019 passed by the Appellate Bench of the Court of Small Causes at Mumbai in (A-1) Appeal No.388 of 2014. The trial Court decreed the suit instituted by the respondent/plaintiff under section 12 of the Act as also under section 13 (1) (e) of the Act. The Appellate Court decreed the suit under section 12 of the Act.

5. C.R.A. [Stamp] 9814 of 2019 filed by the applicant/defendant takes exception to the judgment and decree dated 21st December, 2013 passed by the learned trial Judge in R.A.E. & R Suit No.800/1730 of 1994 as also judgment and decree dated 2nd March, 2019 passed by the Appellate Bench of the Court of Small Causes at Mumbai in (A-1) Appeal No.315 of 2014. By these orders, the Courts below decreed the suit instituted by the respondent/plaintiff under section 12 of the Act.

6. C.R.A. [Stamp] 9818 of 2019 filed by the applicant/defendant takes exception to the judgment and decree dated 21st December, 2013 passed by the learned trial Judge in R.A.E. & R Suit No.797/1727 of 1994 as also judgment and decree dated 2nd March, 2019 passed by the Appellate Bench of the Court of Small Causes at Mumbai in (A-1) Appeal No.318 of 2014. By these orders, the Courts below decreed the suit instituted by the respondent/plaintiff under section 12 of the Act. The Appellate Court dismissed the Cross Objection.

7. C.R.A. [Stamp] 9858 of 2019 filed by the applicant/defendant takes exception to the judgment and decree dated 21st December, 2013 passed by the learned trial Judge in R.A.E. & R Suit No.796/1726 of 1994 as also judgment and decree dated 2nd March, 2019 passed by the Appellate Bench of

the Court of Small Causes at Mumbai in (A-1) Appeal No.317 of 2014. By these orders, the Courts below decreed the suit instituted by the respondent/plaintiff under section 12 of the Act.

8. C.R.A. [Stamp] 9859 of 2019 filed by the applicants/defendants takes exception to the judgment and decree dated 21st December, 2013 passed by the learned trial Judge in R.A.E. & R Suit No.764/1669 of 1994 as also judgment and decree dated 2nd March, 2019 passed by the Appellate Bench of the Court of Small Causes at Mumbai in (A-1) Appeal No.389 of 2014. The trial Court decreed the suit instituted by the respondent/plaintiff under section 12 of the Act as also under section 13 (1) (e) of the Act. The Appellate Court decreed the suit only under section 12 of the Act.

9. C.R.A. [Stamp] 9983 of 2019 filed by the applicants/defendants takes exception to the judgment and decree dated 21st December, 2013 passed by the learned trial Judge in R.A.E. & R Suit No.762/1667 of 1994 as also judgment and decree dated 2nd March, 2019 passed by the Appellate Bench of the Court of Small Causes at Mumbai in (A-1) Appeal No.64 of 2015. The trial Court dismissed the suit. The Appellate Court allowed the appeal preferred by the plaintiff and decreed the suit.

10. C.R.A. [Stamp] 9985 of 2019 filed by the applicants/defendants takes exception to the judgment and decree dated 21st December, 2013 passed by the learned trial Judge in R.A.E. & R Suit No.801/1731 of 1994 as also judgment and decree dated 2nd March, 2019 passed by the Appellate Bench of the Court of Small Causes at Mumbai in (A-1) Appeal No.316 of 2014. By these orders, the Court below decreed the suit instituted by the respondent/plaintiff under section 12 of the Act.

11. C.R.A. [Stamp] 9987 of 2019 filed by the applicant/defendant takes exception to the judgment and decree dated 21st December, 2013 passed by the learned trial Judge in R.A.E. & R Suit No.763/1668 of 1994 as also judgment and decree dated 2nd March, 2019 passed by the Appellate Bench of the Court of Small Causes at Mumbai in (A-1) Appeal No.447 of 2015. The trial Court decreed the suit instituted by the respondent/plaintiff under section 12 of the Act as also under section 13 (1) (e) and 13 (1) (k) of the Act. The Appellate Court confirmed the decree of the trial Court only under section 12 of the Act.

12. C.R.A. [Stamp] 9988 of 2019 filed by the applicants/defendants takes exception to the judgment and decree dated 21st December, 2013 passed by the learned trial Judge in R.A.E. & R Suit No.760/1665 of 1994 as also judgment and decree dated 2nd March, 2019 passed by the Appellate Bench of the Court of Small Causes at Mumbai in (A-1) Appeal No.24 of 2015. By these orders, the Courts below decreed the suit instituted by the respondent/plaintiff under section 12 of the Act.

13. Mr. Godbole submitted that fate of other C.R.A's depends upon outcome of C.R.A No.238 of 2019. He, therefore, advanced submissions in detail in C.R.A. No.238 of 2019.

14. As the common questions of law and facts arise in these applications as also at the request of learned Counsel for the parties, the applications can conveniently be disposed of by this common order. In order to appreciate the controversy raised in these applications, facts from C.R.A No.238 of 2019 are taken into consideration which are as under.

15. The respondent instituted R.A.E & R Suit No.802/1732 of 1994 against the applicant/defendant Dadasaheb Appa Madane for recovery of possession of Room No.13 situate in Ramkali Sitaram Chawl, Anand Nagar, J.M. Road, Bhandup , 400 078 (for short 'suit premises'). The plaintiff alleged that prior to termination of tenancy, the defendant was monthly tenant in respect of the suit premises and the rent is Rs.25/- per month plus permitted increases. The plaintiff alleged that from 1st December, 1978 to 30th April, 1994, the defendant has not paid arrears of rent amounting to Rs.4625/- and permitted increases amounting to Rs.1768.45. By notice dated 2nd May, 1994, the plaintiff called upon the defendant to pay arrears of rent and permitted increases as also terminated tenancy. The defendant was also called upon to hand over vacant and peaceful possession of the suit premises to the plaintiff. The notice was duly served on the defendant. The defendant gave reply to the notice. On 4th September, 1994, the plaintiff instituted the suit. On 26th April, 2000, issues were framed. The defendant deposited arrears of rent and permitted increases on 20th April, 2010 and 28th September, 2011 respectively. The Courts below held that the defendant is liable to be evicted for non compliance of section 12 of the Act and accordingly decreed the suit.

16. In support of this application, Mr. Godbole submitted that the standard rent of the suit premises cannot exceed Rs.10/- per month as since 1976, the defendant and other tenants have maintained that chawl. They constructed W.C and also obtained water and electricity connection. The defendant had spent Rs.4000/- towards urgent and tenantable repairs, construction of W.C and for obtaining electricity and water connection. The defendant is, therefore, entitled to get adjustment of the said amount towards alleged arrears of rent. He relied on section 14 of the Act to contend that it is the duty and obligation of the landlord to keep the premises in habitable condition. As the landlord did not carry out any tenantable repairs and also did

not provide basic amenities, such as water and electricity, the defendant had incurred expenses and, therefore, expenses are required to be adjusted against the arrears of rent. In view thereof, the Courts below were not justified in passing eviction decree under section 12 of the Act.

17. Mr. Godbole further submitted that initially in the year 1976, area where the suit premises is situate was declared as slum area under section 4 of the Maharashtra Slum Areas (Improvement, Clearance and Re-development) Act, 1971 (for short 'Slum Act') on 16th September, 1976. The declaration, however, was set aside. During pendency of the suit, once again area where the suit premises is situate is declared as slum area on 16th August, 1995. The plaintiff preferred Appeal No.18 of 1995 challenging the said declaration. By order dated 8th March, 2002, the appeal preferred by the plaintiff was dismissed. The plaintiff has instituted Writ Petition No.6890 of 2002 in this Court. The said Writ Petition was dismissed on 1st July, 2003. He submitted that by declaration dated 16th August, 1995, CTS No.101, 101/1 to 101/1 to 18 were declared as slum area. The Courts below, however, did not appreciate this aspect and passed eviction decree. He submitted that in terms of section 22 (1) (b) of the Slum Act, the plaintiff must obtain permission of the Competent Authority before executing eviction decree. He, therefore, submitted that the applications require consideration.

18. On the other hand, Mr. Datar supported the impugned orders. He submitted that though in the written statement, the defendant contended that along with other tenants, they have maintained chawl, constructed W.C and that they have also obtained water and electricity connection by spending Rs.4,000/-, no evidence was adduced. That apart, as required by sub section (2) of Section 14 of the Act, no notice was issued to the plaintiff. He, therefore, submitted that contention based on section 14 is totally misconceived.

19. Mr. Datar submitted that declaration dated 16th September, 1976 issued under section 4 of the Slum Act was set aside. Suit was instituted in the year 1994 and during pendency of the suit, area where the suit premises is situate is declared as slum area by Notification dated 16th August, 1995. It will, therefore, be necessary for the plaintiff to obtain permission of the Competent Authority as contemplated by section 22 (1) (b) of the Slum Act. He submitted that subject to this modification, no case is made out for interfering with the impugned orders.

20. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. In so far as the ground of arrears of rent is concerned, the learned trial Judge noted that the defendant was in arrears of rent and permitted increases from 1st December, 1978 to 30th April, 1994. The demand notice dated 2nd May, 1994 was duly served on the defendant. He also gave reply. The defendant did not deposit arrears of rent and permitted increases even after receiving the notice within a period of one month for the date of service of notice. The defendant also did not file application for fixation of standard rent. Issues were framed at Exhibit 9 on 26th May, 2000. The defendant deposited rent and permitted increases on 20th April, 2010 and 28th September, 2011. Thus, the defendant did not deposit arrears of rent and permitted increases within the time stipulated in section 12 of the Act.

21. In so far as the Appellate Court is concerned, the Appellate Court has considered this aspect in paragraphs 19, 20 and 27 and confirmed the findings recorded by the learned trial Judge. In view thereof, I do not find that the Courts below committed any error while decreeing the suit under section 12 of the Act.

22. In so far as contention raised by Mr. Godbole on section 14 of the Act is concerned, as required by sub-section (2) of section 14, no notice was issued by the defendant to the plaintiff. That apart, no evidence was adduced substantiating the fact that the defendant has incurred expenses. In view thereof, I do not find any merit in the submission of Mr. Godbole based on section 14.

23. It is, however, material to note that during pendency of the suit, area where the suit premises is situate is declared as slum area on 16th August, 1995. Section 22 (1) (b) of the Slum Act lays down that where any decree or order is obtained in any suit or proceeding for eviction, no person except with the previous permission obtained by the Competent Authority can execute the decree. In view thereof, it is necessary for the plaintiff to obtain permission of the Competent Authority under section 22 (1) (b) of the Slum Act before executing the decree. The impugned order stands modified to this extent. Before executing the decree in the suits, the plaintiff shall obtain permission of the Competent Authority as contemplated by section 22 (1) (b) of the Act. Subject to this modification, applications fail and the same are dismissed.

[R.G. KETKAR, J.]