

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION (ST.) NO.11440 OF 2019

Vimal Bhagwan Bhangale and another ... Applicants
Vs.
M/s. Sudama Associates Pvt. Ltd. and others... Respondents

Mr. B. A. Singh for Applicants.
Mr. T. S. Ingle i/b. Mr. Ritesh S. Wagh for Respondents.

CORAM : R. G. KETKAR, J.
DATE : JUNE 19, 2019

P.C. :

Heard Mr. Singh, learned Counsel for the applicants and Mr.Ingle, learned Counsel for the respondents at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicants, hereinafter referred to as 'defendants No.7 and 4' respectively, have challenged the judgment and decree dated 03.09.2011 passed by the learned II Joint Civil Judge, Junior Division, Kalyan in Regular Civil Suit No.396 of 1998 as also the judgment and decree dated 02.02.2019 passed by the learned Ad-hoc District Judge-1, Kalyan in Regular Civil Appeal No.189 of 2012. By these orders, the Courts below decreed the Suit instituted by the first respondent, hereinafter referred to as 'plaintiff', under Section 13(1)(l) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Act').

3. The plaintiff has instituted Suit for recovery of possession of room No.10 in chawl No.6 known as 'Gokhale Wadi' situate at Pandurangwadi, Dombivali (East), Taluka Kalyan, District Thane (for short 'suit premises') invoking the grounds under Sections 13(1)(k) (non-

user of the suit premises without reasonable cause for a continuous period of six months immediately preceding the date of the suit) and 13(1)(l) (acquisition of suitable alternate residence) of the Act. The plaintiff contended that Bhagwan Trimbak Bhangle (for short 'Bhagwan') was tenant in respect of the suit premises. After coming into force of the Act, Bhagwan had acquired alternate accommodation at Bingo Plaza, Shrikhande Wadi, Dombivli (East), Taluka Kalyan, District Thane, The premises acquired by Bhagwan are suitable for him. The defendant is, therefore, liable to quit and vacate and deliver the peaceful and vacant possession of the suit premises to the plaintiff.

4. The plaintiff further contended that defendant has not been using the suit premises without any cause for a period of 6 months immediately preceding the date of institution of the Suit. The defendant has kept the suit premises locked and unused without any reasonable cause for a period of more than 6 months in continuation and immediately preceding the date of the Suit.

5. Bhagwan filed written statement dated 11.08.1999 opposing the Suit. Bhagwan denied that he has kept the premises locked and is not using the suit premises continuously for a period of 6 months immediately preceding the filing of the Suit. In fact, the plaintiff has not maintained the suit premises. Bhagwan also denied acquisition of alternate residence.

6. On the basis of pleadings of the parties, the learned trial Judge framed the necessary issues. In support of plaintiff's case, it's authorized Director, Sunil Sudam Patil stepped in witness box and he was cross-examined by the defendants. On behalf of the defendants, defendant No.4 - Nidhi Nitin Mahajan, daughter of Bhagwan stepped in witness

box and she was cross-examined by the plaintiff.

7. On the basis of evidence adduced by the parties, the learned trial Judge decreed the Suit only under Section 13(1)(l) of the Act. Aggrieved by that decision, defendants No.7 and 4 preferred appeal. The learned District Judge has upheld the decree passed by the trial Court under Section 13(1)(l) of the Act. It is against these orders, defendants No.7 and 4 have instituted the present C.R.A.

8. In support of this C.R.A., Mr. Singh strenuously contended that the Suit instituted by the plaintiff is not maintainable. He submitted that plaintiff is a company incorporated under the provisions of the Indian Companies Act, 1956. Along with the plaint and even during the course of evidence, no resolution was passed for filing the Suit. Thus, the Suit was instituted without any authority or resolution of the Company. In support of his submissions, he relied upon the following decisions:

- a. ***National Small Industries Corpn. Ltd. Vs. State (NCT of Delhi), AIR 2009 SC 1284***, and in particular paragraph 10 thereof;
- b. ***VPK Urban Co-op. Cr. Soc. Ltd. Vs. Shaikh Rucnoddin Mohammed, 2010 ALL MR (Cri) 1085*** to contend that in the absence of authorization, Suit filed by the plaintiff is not maintainable.

9. Mr. Singh submitted that the suit premises admeasures 220 sq.ft. Having regard to the members in the family of Bhagwan, suit premises was insufficient. In view thereof, flat at Bingo Plaza was taken by Bhagwan in the name of Vidyadhar. This will not come within the mischief of Section 13(1)(l) of the Act. The Courts below have declined to pass decree under Section 13(1)(k) on the ground of non-user. No cross-objection is preferred by the plaintiff before the District Court. He

submitted that as the premises at Bingo Plaza are in the name of Vidyadhar, it does not amount to acquisition of residence by Bhagwan, who admittedly was the tenant of the suit premises. He, therefore, submitted that Application requires consideration.

10. On the other hand, Mr. Ingle supported the impugned orders. He submitted that Nidhi Nitin Mahajan, witness examined on behalf of the defendants, admitted that the flat at Bingo Plaza was purchased by her father Bhagwan in the name of her elder brother Vidyadhar. Flat at Bingo Plaza admeasures 530 sq.ft. She further admitted that her parents and 4 brothers can comfortably reside in Bingo Plaza. She further admitted that in the year 2005, her elder brother Vidyadhar went to reside in Gitanjali Building from Bingo Plaza. The flat at Bingo Plaza was transferred in the name of her brother Chitranjan on 13.03.2004. Mr. Ingle submitted that in paragraph 7, the learned trial Judge has considered the ground of acquisition of suitable alternate residence. After considering the evidence on record, the learned trial Judge held that after the death of Bhagwan, his legal heirs i.e. his wife, two sons and two daughters are having separate accommodation. Defendant No.7 Vimal is residing with her son Chitranjan at Bingo Plaza. In so far as the decision of the District Court is concerned, Mr.Ingle has taken me through paragraphs 10, 11 and 14 and submitted that after re-appreciating the entire evidence on record, the learned District Judge has affirmed the finding recorded by the learned trial Judge under Section 13(1)(l) of the Act.

11. In so far as the contention raised by Mr. Singh that Suit is not maintainable, Mr. Ingle submitted that no such contention was agitated in the written statement and no issue was framed, and consequently, no evidence was laid. Even in the appeal memo filed before the District

Court, no such ground was raised. In the District Court also, no such contention was advanced. The said contention is sought to be advanced for the first time in this Court. As the said contention was never agitated in the Courts below, defendants No.4 and 7 cannot be permitted to agitate the same for the first time in this Court. Even otherwise, he submitted that no provision of the Indian Companies Act, 1956 or any judgment of the Apex Court or of this Court is cited. He, therefore, submitted that no case is made out for interfering with the impugned orders.

12. 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, plaintiff has instituted Suit invoking the ground of non-user as also acquisition of suitable alternate residence. The Courts below have decreed the Suit under Section 13(1)(l) of the Act. Mr. Singh submitted that the premises at Bingo Plaza were acquired by Vidyadhar and not by Bhagwan, who was tenant of the suit premises. The Courts below were, therefore, not justified in passing the eviction decree on that ground. It is not possible to accept this submission. As mentioned earlier, Nidhi Nitin Mahajan, witness of defendants admitted that her father had taken flat at Bingo Plaza in the name of Vidyadhar. Flat at Bingo Plaza admeasures 530 sq.ft. As against this, suit premises admeasures 220 sq.ft. She further admitted that her parents and four brothers can reside comfortably in Bingo Plaza.

13. The learned trial Judge has considered the ground of acquisition of suitable alternate residence in paragraph 7. After considering the evidence, the learned trial Judge observed that all the legal heirs of Bhagwan are having separate accommodation. As far as the District Court's judgment is concerned, the learned District Judge has considered

this ground in paragraphs 10, 11 and 14 and affirmed the finding under Section 13(1)(l) of the Act.

14. Mr. Singh submitted that in the absence of any authorization or resolution of the Company, Suit is not maintainable. He relied upon two decisions, as indicated earlier. In the case of **National Small Industries Corp. Ltd.** (*supra*), in paragraph 10, the Apex Court held that a company can be represented by an employee or even by a non-employee authorized and empowered to represent the company either by a resolution or by a power of attorney. The said case arose from the complaint filed under Section 138 of the Negotiable Instruments Act, 1881. Likewise, the decision in **VPK Urban Co-op. Credit Society Limited** (*supra*) arose from the complaint filed under Section 138 of the Negotiable Instruments Act, 1881. Mr. Singh has, however, not invited my attention to provisions of Companies Act as also any precedent on the proposition that the eviction suit cannot be filed by the company unless resolution is passed. Even otherwise, a perusal of the plaint shows that the Suit is instituted by duly authorized Director Sunil Sudam Patil. It has also come on record that the family members are Directors of the plaintiff-company.

15. That apart, as mentioned earlier, no such contention was agitated before the Courts below. During the cross-examination of plaintiff's witness, question was put to him as regards passing of the resolution by the company. He deposed that company had passed resolution and admitted that he has not mentioned that fact in the plaint and did not produce the resolution. As mentioned earlier, the company is a family concern of the plaintiff. In view thereof, I do not find any merit in this submission. Defendants No.4 and 7 were 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. Defendants No.4 and 7 were also not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the Courts below. Hence, Application fails and the same is dismissed.

16. At this stage, Mr. Singh orally applies for continuation of the ad-interim order dated 30.04.2019 for a period of eight weeks from today. He states that the applicants and all adult members residing with them giving usual undertaking to this Court with advance copy to the other side, within two weeks from today incorporating therein that,

- (i) they are in actual possession of the suit premises and nobody else is in possession;
- (ii) they have so far neither created third party interest nor parted with possession of the suit premises;
- (iii) they will hereafter neither create third party interest nor part with possession of the suit premises;
- (iv) they will clear the arrears of rent, if any, within two weeks from today; and
- (v) in case they are unable to obtain suitable orders from the higher Court within eight weeks from today, they will deliver vacant and peaceful possession of the suit premises to the respondents.

17. In view thereof, notwithstanding dismissal of the C.R.A., eviction decree shall not be executed for a period of eight weeks from today subject to the applicants and all adult family members residing with them filing undertaking in the aforesaid terms within two weeks from today with advance copy to the other side. It is made clear that in case the undertaking is not filed within two weeks from today or defendants commit breach of any of the conditions of the undertaking, this interim

order shall stand vacated without further reference to the Court. The respondents are permitted to withdraw the arrears of rent deposited by the defendants in this Court unconditionally. Order accordingly.

(R. G. KETKAR, J.)

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