

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

CIVIL REVISION APPLICATION [STAMP] NO.12829 OF 2019

Ashok Laxman Sankpal (since deceased)	]	
Shubhangi Ashok Sankpal and others.	]	Applicants
Vs.		
Shashikala alias Sumitra M. Khatu	]	Respondent

.....
Mr. Anantkumar L. Gore, Advocate for the Applicants.

.....
CORAM : R.G. KETKAR, J.

DATE : 11th JUNE, 2019.

P.C.

Heard Mr. Gore, learned Counsel for the applicants.

2. By this application 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 judgment and decree dated 30th July, 2016 passed by the learned trial Judge in R.A.E Suit No.185/301 of 2011 as also the judgment and decree dated 30th January, 2019 passed by the Appellate Bench of the Court of Small Causes at Mumbai in (A-1) Appeal No.476 of 2016. By these orders, the Courts below decreed the suit instituted by the respondent, hereinafter referred to as 'plaintiff' and directed the defendants to hand over vacant and peaceful possession of Room No.6 admeasuring 180 square feet situate on the first floor, 2nd Khattar Gali, Mumbai-400 002 (for short 'suit premises').

3. In support of this application, Mr. Gore submitted that before instituting the suit, the plaintiff did not issue notice to the defendants. At the time filing of the suit, there were in all five members in the family of the

plaintiff and equal members in the family of the defendants. The plaintiff came with the case that her sons Chandrashekhar and Milind got married. Members in the family of the plaintiff increased to eight from five and it is difficult for the plaintiff to accommodate her sons in the premises available to her.

4. Mr. Gore submitted that the defendants came with a specific case that the plaintiff is in possession of room No.4 admeasuring 500 square feet plus 500 square feet mezzanine floor as also bath room admeasuring 100 square feet. Thus, the plaintiff is having sufficient premises to take care of her married sons. The Courts below were, therefore, not justified in decreeing the suit on the ground of reasonable and bona fide requirement.

5. Mr. Gore submitted that in so far as question of comparative hardship is concerned, the Courts below answered that issue in favour of the plaintiff. He submitted that the Courts below committed serious error in answering that issue in favour of the plaintiff. For all these reasons, he submitted that the application requires consideration.

6. I have considered the submissions advanced by Mr. Gore. I have also perused the material on record. As far as contention that no notice was issued to the defendants before instituting the suit is concerned, said contention is devoid of any merit. The plaintiff has instituted suit under section 16 (1) (g) of the Maharashtra Rent Control Act, 1999 (for short 'Act'). In view thereof, no notice is required to be issued before instituting the suit invoking ground of reasonable and bona fide requirement. I am supported by the decision of **V. Dhanapal Chettiar Vs. Yesodai Ammal, AIR 1979 Supreme Court, 1745** in taking this view.

7. In so far as contention as regards members in the family of the plaintiff is concerned, the Courts below after appreciating the evidence on record have found that plaintiff's sons Chandrashekhar and Milind were married. Chandrashekhar is having one daughter and Milind is also having one son. As such, there are eight members in the family of the plaintiff. The Courts below also dealt with contention of the defendants that the plaintiff is having Room No.4 admeasuring 500 square feet as also Potmala/loft of equal size i.e 500 square feet. In paragraph 25, the learned trial Judge noted that though the defendants raised this contention, they did not adduce any cogent evidence to establish the said fact. The defendant could not prove that more area is available to the plaintiff. The Appellate Court affirmed trial Courts finding. The Courts below also noted that younger son of the plaintiff is residing in the rented premises. The Courts below after appreciating the evidence on record, concurrently held that the plaintiff has established that her requirement is reasonable and bona fide.

8. In so far as question of comparative hardship is concerned, the Courts below held that after instituting the suit, the defendants did not make any attempt to search alternate accommodation. Defendant No.1(a) Shubhangi also admitted that she is having other accommodation than the suit premises. Thus, after considering the evidence on record, the Courts below answered issue of comparative hardship in favour of the plaintiff.

9. In view thereof, I do not find that the Courts below committed any error in decreeing the suit. 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. 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 Application fails and the same is dismissed.

[R.G. KETKAR, J.]