

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application No.335 of 2019
[Converted from Writ Petition NO. 6805 OF 2019]

Smt. Jayagouri w/o Shawji Narsibhai Makwana
And D/o Darji Gondalal Tulsi (deleted)
And others.

...Petitioners

Versus

Smt. Rashida Shabbir Sanchwalla
And others.

...Respondents

....

Ms. Dhruiti Kapadia a/w. Kunal Tiwari i/b. K. Juris, for the Petitioners.
Mr.A.S. Khandeparkar a/w Ms. Kalpana Kanhere, Advocate for
Respondent No.5.

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CORAM : R. G. KETKAR, J.

DATE : 24th JUNE, 2019

P.C.

1. Heard Ms. Dhruiti Kapadia, learned counsel for the petitioners and Mr. A.S. Khandeparkar, learned counsel for respondent No.5, at length.

2. By this petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as the 'defendants', have challenged the judgment and decree dated 14.12.2011 passed by the learned Judge, Court Room No.6 of the Court of Small Causes at Bombay in R.A.E. & R. Suit No.268/554 of 1995 as also the judgment and decree dated 18.3.2019 passed by the Appellate Bench of the Small Causes Court at Mumbai in (2a) Appeal No.6/2012. By these orders, the

Courts below decreed the suit instituted by respondents No.1, 3, 4 and 5, hereinafter referred to as the 'plaintiffs' and directed defendants No.1(a) to 1(e) (L.Rs. of original defendant No.1 Jaya Gauri, since deceased) to vacate and hand over the peaceful possession of shop No.3, ground floor of the building known as Hyderbhai Lakdawalla Building situate at 15/17, Saifee Jubilee Street, Bombay – 400 003 to respondents No.1, 3, 4 and 5 (original plaintiffs). The Courts below decreed the suit instituted by the plaintiffs under Section 12(3) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, 'Act'). In view thereof, leave to convert Writ Petition into C.R.A. is granted. Amendment shall be carried out within one week from today. In pursuance thereof, the office has converted this Writ Petition into C.R.A. The facts and circumstances, giving rise to filing of the present C.R.A., briefly stated, are as under.

3. The plaintiffs instituted suit against the defendants *inter alia* contending that the monthly rent in respect of the suit premises is Rs.159.60. The defendants are in arrears of rent from 1.6.1982. Demand notice dated 11.1.1994 was issued to defendant No.1 Jayagauri and all other heirs and legal representatives of Darji Gondalal Tulsi terminating the tenancy as also calling upon them to pay arrears of rent and permitted increases to the tune of Rs.14,856.10 paise. It appears that the defendants paid Rs.5,000/- on 22.3.1994 in response

to the notice. The plaintiffs instituted suit invoking the ground of changer of user of the suit premises [Section 13(1)(a)] as also arrears of rent and permitted increases [Section 12].

4. The defendants filed written statement *inter alia* contending that the demand notice was not served on them. The defendants also denied the contentions raised by the plaintiffs. On the basis of the pleadings of the parties, the learned trial Judge framed the necessary issues. The parties adduced evidence. By order dated 14.12.2011, the learned trial Judge decreed the suit under Section 12 of the Act. Insofar as the ground of change of user is concerned, the learned trial Judge answered that issue as redundant. Aggrieved by that decision, the defendants preferred appeal. By order dated 18.3.2019, the Appellate Court dismissed the appeal. The appellate Court held that the plaintiffs proved that defendant No.1 has failed and neglected to pay the arrears of rent and permitted increases for more than six months after receipt of the notice. The Appellate Court held that the plaintiffs have not proved that the defendants have changed the user of the suit premises. It is against these orders, the defendants have instituted present Writ Petition.

5. In support of this Petition, Ms. Kapadia strenuously contended that the Courts below committed serious error in holding that the demand notice dated 11.1.1994 was duly served on the

defendants. She submitted that defendant No.1 used to put thumb impression. She never signed any document. She submitted that even in the written statement defendant No.1 had put her thumb impression.

6. The plaintiffs in fact have fraudulently managed to obtain the signature of defendant No.1. As the demand notice is not served on defendant No.1, the Courts below were not justified in passing the decree on the ground of arrears of rent and permitted increases.

7. Ms. Kapadia submitted that the suit premises is a residential premises and not a commercial premises. The plaintiffs have claimed exorbitant/excessive rent @ Rs.154.60 as against rent of Rs.25/- per month.

8. Ms. Kapadia further submitted that respondents No.7 to 14 are willing to offer temporary alternate accommodation as the property where the suit premises is situate is taken over by them for redevelopment. She submitted that the petition requires consideration.

9. On the other hand Mr.Khandeparkar supported the impugned orders. He submitted that the demand notice dated 11.1.1994 is duly served on defendant No.1. The acknowledgement is signed by defendant No.1 as also her son Kishor. On 16.3.1995 the suit was instituted. On the basis of the pleadings, issues were framed on 6.5.2002. On 22.3.1994 defendant No.1 remitted Rs.5,000/- and thereafter did not either deposit or pay the rent to the plaintiffs. He submitted that the

plaintiffs are not aware of the offer made by respondents No.7 to 14. In any case, he submitted that the plaintiffs are the owners and landlords of the suit premises and they are not ready and willing to offer any temporary alternate accommodation or permanent alternate accommodation to the defendants. He, therefore, submitted that no case is made out for interfering with the impugned orders.

10. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that the plaintiffs had issued demand notice dated 11.1.1994. In the demand notice, the plaintiffs claimed that monthly rent is Rs.159.60 paise. Defendant No.1 has not paid the rent from 1.6.1982. It is also not in dispute that the defendants did not give any reply. By that notice, the plaintiffs called upon defendant No.1 and other L.Rs. to pay the arrears of rent and permitted increases to the tune of Rs.14,856.10 paise, failing which they will institute suit for ejectment and recovery of rent. It is also not in dispute that on 22.3.1994, defendant No.1 remitted Rs.5,000/-. Thus, an amount of Rs.9856.10 paise was not paid. It is also evident from record that the suit was instituted on 16.3.1995 invoking the ground under Section 13(1)(a) read with Section 108(o) of the Transfer of Property Act, 1882 and Section 12 of the Act. The issues were framed on 6.5.2002. Save and except payment of Rs.5,000/- the defendants have

neither paid nor deposited any rent.

11. The defendants came with the case that the demand notice was not served on them. With the assistance of the learned counsel appearing for the parties, I have perused the written statement filed on behalf defendants as also oral evidence. A perusal of the evidence of Ashok Makwana shows that in paragraphs-3 and 4, he deposed that defendant No.1 is illiterate lady. In paragraph-9, he denied receipt of the demand notice. Before the Appellate Court it was further argued that the plaintiffs fraudulently managed to obtain signature of defendant No.1, who used to be in habit to put thumb impression and never put her signature on any document. Reliance was placed on the thumb impression put by defendant No.1 on the written statement.

12. In paragraph-16, the Appellate Court noted that the demand notice was sent by Registered Post A.D. as well as Under Certificate of Posting on the correct address of defendant No.1. The acknowledgment receipt bears two signatures i.e. of defendant No.1 as well as Kishore who is her son. The learned trial Judge recorded a finding that the notices were duly served. The Appellate Court also noted that Kishore has also signed on the postal acknowledgment. Neither defendant No.1 nor Kishore entered the witness box. Mere denial of signatures on postal acknowledgment cannot be believed. Defendants have not adduced sufficient evidence in rebuttal. In view of Section 27 of the

General Clauses Act, 1897 as also Section 114 of the Indian Evidence Act, 1872 once the notice is sent at the correct address, presumption is about the service of the notice unless it is rebutted by sufficient evidence. In the present case, no evidence of rebuttal was adduced by the defendants. Thus the Courts below after appreciating the evidence on record have concurrently held that the demand notice was duly served on defendant No.1 and other L.Rs. By demand notice, the plaintiffs specifically claimed arrears of Rs.14,856.10, out of which the defendants have only paid Rs.5,000/-. The Courts below have considered various judgments and held that the plaintiffs have proved that defendant No.1 is the willful defaulter and accordingly decreed the suit under Section 12 of the Act.

13. Ms. Kapadia submitted that the suit premises is residential premises and the demand raised in the notice is highly exorbitant and excessive. It is not possible to accept this submission for more than one reason. In the first place, the defendants did not give any reply to the demand notice raising this contention. Secondly, even assuming in favour of the defendants that the demand notice was not served on them, in the written statement no such contention was advanced. No application for fixation of standard rent was also made.

14. Lastly, Ms. Kapadia submitted that respondents No.7 to 14 are ready and willing to offer temporary alternate accommodation as

they have taken over redevelopment of the property where the suit premises is situate. Mr. Khandeparkar, however, submitted that the plaintiffs are not ready and willing to offer either temporary or permanent alternate accommodation to the defendants. In view thereof, I do not find any merit in this submission.

15. The defendants are 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. The defendants are also not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the Courts below. Merely because on the basis of evidence on record another view is possible, that itself is no ground for invocation of powers under Section 115 of C.P.C. No case is made out for invocation of powers under Section 115 of C.P.C. Hence, Civil Revision Application fails and the same is dismissed with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)