

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 513 OF 2018

Bhagwanti Kaluram (Kalulal) Jain

(deleted since Deceased)

(1a) Kalulal Dhulchandji Jain and others.

..Applicants.

Versus

Premendra Mohan Dewanchand Trikha

...Respondent

....

Ms. Sheetal Pandya a/w. Ms. Mitali Chhatpar i/b. M/s. Solicis Lex,
Advocate for the Applicants.

Mr. R.P. Singh, Advocate for the Respondent.

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CORAM : R. G. KETKAR, J.

DATE : 09th JANUARY, 2019

P.C.

1. Heard Ms.Sheetal Pandya, learned counsel for the applicants and Mr.R.P. Singh, learned counsel for the respondent, at length.

2. This application takes exception to the judgment and decree dated 29.10.2013 passed by the learned Judge, Court Room No.36 of the Small Causes Court at Mumbai (Bandra Branch) in R.A.E. & R. Suit No.498/872 of 2010 as also the judgment and decree dated 27.3.2018 passed by the Appellate Bench of the Small Causes Court at Mumbai, Bandra Branch in (A-1) Appeal No.55/2013. By these orders, the Courts below decreed the suit instituted by the respondent, hereinafter referred to as the 'plaintiff' under Section 16(1)(g) of the Maharashtra Rent Control Act, 1999 (for short, 'Act').

3. Rule. Mr.Singh waives service. Having regard to the narrow controversy raised in this C.R.A. as also at the request and by consent of the parties, Rule is made returnable forthwith and C.R.A. is taken up for final hearing.

4. In support of this application, Ms. Pandya has invited my attention to paragraph-4 of the plaint where the plaintiff asserted that the plaintiff requires room No.5 in building 'Ram Kutir' situate at 128, Jawahar Nagar, Goregaon (West), Mumbai – 400 062 (for short, 'suit premises') reasonably and bonafide for use and occupation by themselves and the members of their family. The plaintiff contended that the joint family consists of the plaintiff and three brothers. Each of them has respective spouses and sons residing together. There are many family members in the plaintiff's family who are depending upon him for housing accommodation and their present accommodation is insufficient for their housing needs.

5. Ms. Pandya submitted that entire building, namely, 'Ram Kutir' is owned by the plaintiff and other co-owners. On the ground floor, there are four tenants, namely, room No.2 is occupied by Ms. Mayurika Parekh against whom eviction proceedings are pending, room No.3 is occupied by Mr.Musafir Singh, room No.4 is occupied by Mr.Shah and the suit premises by the applicants. Room No.1 was earlier occupied

by Ms.Chetna wd/o. Chandra Mohan Dewanchand Trikha. She has acquired the premises by registered deed dated 29.5.2010 and another premises by registered deed dated 12.5.2017. On the first floor brother of the plaintiff by name Mr.Brijmohan Trikha is in possession of rooms No.6, 7 and 10. Rooms No.8 and 9 are occupied by the tenants Mr.Sharad Shah and Mr.Tarun Shah respectively. On the second floor, rooms No.11 and 13 are in possession of the plaintiff's brother by name Mr.Premendra Trikha. Room No.14, on the second floor, was earlier occupied by Mr.Rammohan Trikha who was Bachelor and who expired. Room No.15, on the second floor, is used as common kitchen by the landlords. In short, she submitted that having regard to the family members of the plaintiffs and the premises in their possession, the Courts below were not justified in decreeing the suit. In particular she submitted that the Appellate Court has not dealt with this aspect at all. She submitted that the only reasoning found in allowing the appeal is in paragraph-22 of the order passed by Appellate Court. She submitted that the Appellate Court being the last fact finding Court ought to have reappreciated entire material on record. She further submitted that in fact the plaintiff had suppressed acquisition of premises by Ms. Chetna Chandra Mohan Trikha. Thus, the plaintiff did not approach the Court with clean hands. The requirement of the plaintiff is neither reasonable nor bonafide.

6. On the other hand, Mr. Singh supported the impugned orders. He submitted that it has come on record that the defendants' family is joint family consisting of husband and two sons. They all are residing together at flat No.201/11, Jawahar Nagar, Goregaon (West), Mumbai. The Appellate Court has considered this aspect in paragraph-22 of the impugned judgment. He further submitted that after appreciating the evidence on record, both the Courts below have concurrently decreed the suit and, therefore, no case is made out for interfering with the impugned orders.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. During the course of hearing, Mr. Singh upon instructions from the plaintiff Premendra Mohan Dewanchand Trikha, who is present in the Court, submits that by consent the order passed by the Appellate Court may be set aside and the appeal may be restored to the file of Appellate Court for deciding it afresh in a time bound manner. He has tendered a photo-copy of plaintiff's Aadhaar Card, which is taken on record and marked 'X' for identification. The learned Counsel for the parties submit that they will take out application under Order XLI Rule 27 of Code of Civil Procedure, 1908 (for short, 'C.P.C.') for adducing additional evidence before the Appellate Court and that the parties will

appear before the Appellate Court on 21.01.2019 and for that purpose no fresh notice be issued to them.

8. In view thereof, by consent, petition is disposed of in following terms:
 - i. The impugned judgment and decree dated 27.3.2018 passed by the Appellate Bench of the Small Causes Court at Mumbai, Bandra Branch in (A-1) Appeal No.55/2013 is set aside. (A-1) Appeal No.55/2013 is restored to the file of Appellate Court.
 - ii. The parties agree that they will appear before the Appellate Court on 21.1.2019 and for that purpose no fresh notice be issued to them.
 - iii. Both the parties are at liberty to file applications under Order XLI Rule 27 of C.P.C. for adducing additional evidence. If such an applications are filed the Appellate Court will decide the same on its own merits and in accordance with law.
 - iv. The Appellate Court is requested to decide the appeal within six months from appearance of the parties on 21.1.2019.
 - v. All contentions of the parties on merits are expressly kept open.
 - vi. Rule is made absolute in aforesaid terms with no order as to costs.
 - vii. Order accordingly.

(R. G. KETKAR, J.)