

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.51 OF 2017

Tareshkumar Madanlal Thapar ... Applicant
Vs.
Gulabbhai Raghunath Sangrajka ... Respondent

ALONG WITH

CIVIL APPLICATION NO.254 OF 2017

IN

CIVIL REVISION APPLICATION NO.51 OF 2017

Jagdish Nanalal Sangrajka ... Applicant

In the matter between:

Tareshkumar Madanlal Thapar ... Applicant
Vs.
Gulabbhai Raghunath Sangrajka ... Respondent

ALONG WITH

CIVIL APPLICATION NO.536 OF 2018

IN

CIVIL REVISION APPLICATION NO.51 OF 2017

Mahesh Bhauchand Sangrajka ... Applicant

In the matter between:

Tareshkumar Madanlal Thapar ... Applicant
Vs.
Gulabbhai Raghunath Sangrajka ... Respondent

Mr. B. K. Barve a/w. Mr. Sandeep Barve i/b. B. K. Barve & Co. for Applicant in C.R.A.

Mr. Sachin D. Kadam for Respondent in C.R.A.

Mr. Vishal Kanade a/w. V. Mirasee i/b. M/s. Shah & Sanghavi for Applicant in C.A.C.No.254 of 2017.

CORAM : R. G. KETKAR, J.

DATE : APRIL 3, 2019

P.C. :

Heard Mr. Barve, learned Counsel for the applicant and Mr.Kadam, learned Counsel for the respondent in C.R.A. as also

Mr.Kanade, learned Counsel for the intervener in C.A.No.254 of 2017.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicant, hereinafter referred to as 'defendant', has challenged the judgment and decree dated 15.06.2012 passed by the learned Judge, Court Room No.25 of the Court of Small Causes at Mumbai in R.A.E.Suit No.568/946 of 2011 as also the judgment and decree dated 02.12.2016 passed by the Appellate Bench of the Small Causes Court in Appeal No.321 of 2014. By these orders, the Courts below decreed the Suit instituted by the respondent, hereinafter referred to as 'plaintiff', under Sections 15 and 16(1)(g) of the Maharashtra Rent Control Act, 1999 (for short 'Act').

3. During the pendency of this C.R.A., applicant and the respondent have filed consent terms dated 23.02.2019. Mr. Barve submitted that as the plaintiff and defendant have amicably resolved the controversy between them by executing consent terms, which are lawful, the C.R.A. may be disposed of in terms of the consent terms. Mr. Barve invited my attention to the earlier proceedings filed between the parties, namely, R.A.E.Suit No.568/946 of 2011. Even earlier, plaintiff had instituted R.A.E.Suit No.69/110 of 2008 in the Small Causes Court against the defendant for eviction. The controversy between the parties was amicably settled out of Court. By order dated 08.09.2008, the plaintiff was allowed to withdraw the Suit. He has taken me through the consent terms entered into between the parties in the present C.R.A. to contend that the parties have agreed to resolve their disputes amicably. The plaintiff accepted that the entire arrears of rent in respect of the suit premises has been fully paid by the defendant along with the compensation on the basis of the terms and conditions mutually agreed between the parties before execution of the consent terms. The plaintiff has accepted and confirmed that defendant is a protected tenant in

respect of the suit premises; that defendant is a lawful tenant of the suit premises. The plaintiff agreed to withdraw Execution Application No.355 of 2012 filed before the Small Causes Court. He further submitted that defendant undertook to pay rent @ Rs.1,000/- per month plus additional amount of Rs.8,000/- per month i.e. Rs.9,000/- per month along with property tax as applicable from time to time. He undertook to pay the enhanced amount by mutual consent. He submitted that as the parties have amicably settled the controversy between them, C.R.A. may be disposed of in terms of the consent terms. Alternatively, he submitted that in case the Court is not inclined to dispose of the C.R.A. in terms of the consent terms, defendant may be permitted to withdraw this C.R.A. as in pursuance of the consent terms, plaintiff has withdrawn the execution proceedings. The parties filed *Purshis* at exhibit-21 for withdrawal of the execution application. By order dated 07.03.2019, the learned trial Judge has disposed of the execution proceedings as withdrawn.

4. As far as disposing of the C.R.A. in terms of consent terms is concerned, Order XXIII, Rule 3 of C.P.C. requires the Court to record satisfaction that the controversy between the parties is lawfully settled in terms of the consent terms. With the assistance of the learned Counsel for the parties, I have perused the consent terms. A perusal of the consent terms shows that in so far as the ground of arrears of rent under Section 15 of the Act is concerned, the consent terms deal with this ground. The consent terms are however, totally silent in respect of ground of reasonable and bonafide requirement as contemplated under Section 16(1)(g) of the Act. It is material to note that the Courts below have decreed the Suit under Section 16(1)(g) of the Act. In the teeth of the concurrent findings of fact, it is inconceivable that plaintiff landlord will give up the ground of reasonable and bonafide requirement. As

mentioned earlier, the consent terms are totally silent as regards ground of reasonable and bonafide requirement under Section 16(1)(g) of the Act.

5. That apart, intervener - Jagdish Nanalal Sangrajka, who has taken out C.A.No.254 of 2017 claims that the land bearing plot No.229, Sion (East), Mumbai 400 022 along with the structure standing thereon known as Rugnath Chamber was originally owned by one Rugnath Odhavji Sanghrajka. The said Rugnath had made his last Will and Testament dated 06.08.1971. He expired sometime in April, 1982. Under his last Will and Testament, Rugnath bequeathed the said property to his three sons, namely, i) Nanalal Sanghrajka (1/3rd share), ii) Gulabchand Sanghrajka (1/3rd share) and iii) Late Bhauchand Sanghrajka (1/3rd share). Jagdish is the son of Nanalal. Married sister of Jagdish, Ms Prafulla Mansukhlal Doshi has instituted Suit No.1856 of 2006 on the Original Side of this Court against Jagdish, original plaintiff and the legal heirs of late Bhauchand Sanghrajka. Jagdish claims that he is one of the co-owners of the said property. It is settled principle of law that one of the co-owners can institute a Suit against the tenant for eviction without impleading other co-owners. Such co-owner prosecutes the Suit for and on behalf and also for the benefit of the other co-owners. As mentioned earlier, the Courts below have decreed the Suit under Sections 15 and 16(1)(g) of the Act. The consent terms are totally silent as regards ground of reasonable and bonafide requirement under Section 16(1)(g) of the Act is concerned. By entering into the consent terms with the defendant, plaintiff is causing prejudice to the interest of the intervener and other co-owners. In view thereof, I am satisfied that the consent terms executed between plaintiff and defendant deprive the other co-owners the fruits of the decree, and therefore, the consent terms are not lawful. I, therefore, decline to dispose of the C.R.A. in terms of the consent terms.

6. That brings me to the alternate submission made by Mr. Barve. Mr. Barve submitted that as in pursuance of the consent terms, the plaintiff has withdrawn the execution application on 07.03.2019, he may be allowed to withdraw the C.R.A.

7. I have heard Mr. Kanade on behalf of the Intervener, who has taken out Civil Application No.254 of 2017. He submitted that as the defendant is unconditionally withdrawing the C.R.A., he has no objection.

8. In view thereof, on the motion made by Mr. Barve, C.R.A. is allowed to be withdrawn and is dismissed as withdrawn.

9. In view of the disposal of C.R.A., Civil Application No.254 of 2017 and Civil Application No.536 of 2018 do not survive and the same are disposed of accordingly.

(R. G. KETKAR, J.)

Minal Parab