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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 464 OF 2017

Jayawanti S. Salgaonkar (deceased)
through Lrs.

... Applicant.
(Orig. Defendant)

Versus

M/s Ashtavinayak Enterprises, through
Partner Shri Dhanpat Raj V. Bhansali and Anr.

... Respondents.
(Orig. Plaintiffs)

.....

Mr. Gauraj Shah i/b Mr. Shantanu Chandratre, Ms. Sayed Tafseer Fatema
for Applicant.

Mr. Saket Mone i/b Vidhi Partners for Respondents.

.....

CORAM : S. C. GUPTE, J.

DATE : 17 SEPTEMBER, 2019

ORAL JUDGMENT :-

1. Heard learned counsel for the parties.
2. This civil revision application challenges an appellate order dated 11 July 2017 passed by the Court of Small Causes at Bandra, Mumbai, on remand of the appeal.
3. The Respondents herein (who were Plaintiffs before the Court of first instance) had filed the present suit for eviction against the Applicant (who was the Defendant before the trial Court and who is now represented through her legal representatives) for eviction under Section 16(1)(i) of the Maharashtra Rent Control Act, 1999 (for short “the Act”). Section 16(1)(i) of the Act entitles a landlord to recover possession, if the premises are reasonably and bonafide required for the immediate purpose of demolishing them and erecting a new building in their place. It was

the case of the Plaintiffs that the Defendant was a tenant of Plaintiff No.2 who was a subsequent purchaser of the suit property through a deed of conveyance from its original owner, one Mr. Merwin Francis Misquitta, in respect of the suit premises, which admeasured 200 sq. ft. Plaintiff No.2 had entered into a development agreement with Plaintiff No.1, authorising the latter to develop the suit property. There were in all 14 occupants/tenants in different chawls/structures on the suit property; out of which 12 tenants had already vacated their respective premises by surrendering possession to the Plaintiffs in lieu of monetary consideration or alternate accommodation, as the case may be. The Defendant, however, refused to vacate the suit premises in spite of the Plaintiffs having offered alternate accommodation of an area of 240 sq. ft. (carpet) in the proposed building to be constructed on the suit property. It was also the Plaintiffs' case that the Defendant had carried out additions and alterations of permanent nature in the suit premises by extending the area by about 100 ft. and, therefore, the Municipal Corporation of Greater Mumbai ("MCGM") had issued a notice under Section 351 of the Mumbai Municipal Corporation Act, 1888.

4. The Defendant resisted the suit. The Trial Court framed various issues in the eviction suit. These *inter alia* concerned the alleged reasonable and bonafide requirement of the Plaintiffs for the immediate purpose of demolishing all existing chawls / structures and reconstruction of a new building at the same site, and compliance with the provisions of Section 16(6) of the Maharashtra Rent Control Act, 1999 for that purpose. On the issue of reasonable and bonafide requirement of the landlord, the trial Court recorded its findings in the affirmative. On the issue of compliance on the part of the landlord with the provisions of Section 16(6) of the Act, the learned trial Court Judge, however, held in the negative. It was the contention of the Defendant that the Plaintiffs had

not complied with the provisions of Section 16(6) of the Act, inasmuch as no plan for reconstruction was proved by the Plaintiffs by examining any architect; as also no proof was tendered of their financial position to complete the proposed reconstruction by adducing oral or documentary evidence. It was, in particular, submitted by the Defendant that the Plaintiffs had not given undertaking as required by the provisions of Sub-Section (6) of Section 16 of the Act and had, thus, not fulfilled the conditions laid down therein and therefore, they were not entitled to a decree of eviction. So far as the financial position of the Plaintiffs-landlords is concerned, there was no adverse finding recorded by the Court. The Court, in fact, observed that, nowadays, funds could always be made available by obtaining loans from banks and other financial institutions. Apropos, however, the second condition, concerning plans and estimates for the new building, the trial Court observed that the plans submitted by the plaintiffs-landlords were not sanctioned by the planning authority, i.e. MCGM. The Court also observed that the third condition, namely, that the new building to be erected by the landlord ought to contain residential tenements of not less than the number of tenements existing in the building sought to be demolished, was not satisfied in the present case. The plan submitted on behalf of the Plaintiffs-landlords did not show how many tenements were being constructed by the Plaintiffs. Thirdly, and more importantly, the Court observed that the Plaintiffs had not given any undertaking as required under clause (d) of Sub-Section 6 of Section 16. The Court held that, accordingly, the plaintiffs had not fulfilled the conditions stipulated in clauses (b), (c) and (d) of Sub-Section (6) of Section 16 of the Act. In the premises, the court held against the Plaintiffs-landlords on the issue of compliance with the provisions of Section 16(6) of the Act.

5. When the matter came in appeal before it at the instance of

the Plaintiffs-landlords, the points of determination framed by the Appeal Court *inter alia* included the issue of compliance with the provisions of Section 16(6) of the Act. Agreeing with the trial court, the Appeal Court held that the Plaintiffs-landlords had failed to comply with the provisions of Section 16(6) of the Act. The discussion of the Appeal Court in this behalf indicates that what was considered was (i) the exact area in occupation of the Defendant, (ii) the number of tenements to be provided in the new building and (iii) the undertaking to be submitted by the landlords in accordance with the provisions of Section 16(6) of the Act. On each of these points, the Appeal Court held against the Plaintiffs-landlords and affirmed the decree of the trial Court.

6. The matter was, thereafter, carried by the Plaintiff-landlord before this Court in a civil revision application. By its order dated 30 August 2016, this Court remanded the matter to the Appellate Court after allowing the Plaintiffs-landlords to file an undertaking in terms indicated by the Court.

7. Before the Appeal Court, on remand, the requisite undertaking was filed by the plaintiffs-landlords. The Appeal Court, after considering the matter afresh and in the light of the undertaking, held in favour of the plaintiffs. It held that the conditions of Sub-Section (6) of Section 16 were duly complied with by the plaintiffs.

8. The Defendant is aggrieved by this order. Her heirs submit that the Appeal Court, on remand, was directed to hear the entire matter afresh; what it actually applied its mind to was merely compliance, if any, on the part of the landlords with the conditions prescribed in Sub-Section (6) of Section 16 and not the other part of Section 16 including, in particular, the bonafides or reasonableness of the need on the part of the landlords of demolishing the suit building and construction of a new building in its place.

9. The main issue in the present civil revision application, thus, concerns the nature of the remand by this Court, when the appeal was remitted to the Appellate Bench of the Small Causes Court: whether the entire controversy was laid bare or whether compliance, if any, on the part of the landlord post submission of an undertaking in accordance with Section 16(6) of the Act, was the only matter which had actually survived and was left to be decided by the Appeal Court.

10. It is apparent from the remand order of 30 August 2015 that what was pointed out before this Court by the parties was mainly two aspects. The first was the area of the suit premises occupied by the Defendant and the corresponding area to be allotted in the new Building to be constructed at site. It was the case of the Plaintiffs that the Defendant was a tenant in respect of premises admeasuring 200 sq.ft., and that alternative premises admeasuring 240 sq.ft. offered in the new building to be constructed at site would be an adequate compliance with Section 16. On the other hand, it was the case of the Defendant that the suit premises admeasured over 300 sq.ft. On this point, at the hearing before this Court, the Plaintiff-landlord offered to allot premises admeasuring 375 sq. ft. carpet area to the Defendant. In view of this offer, this Court was of the view that the controversy in respect of area occupied by the tenant and the area to be allotted to him in the new building constructed at site, did not survive any longer. The second aspect debated before this Court, when it disposed of the earlier civil revision application on 30 August 2016, was that there was no undertaking in terms of Section 16(6) of the Act on the part of the landlord. On this, the Plaintiffs, submitted before this Court that they would submit a fresh undertaking in terms of Section 16(6) of the Act incorporating therein their averment affirming readiness and willingness on their part for

allotment of alternative premises of 375 sq. ft. carpet area to the Defendant and also furnishing copies of IOD and sanctioned plans to the latter and requiring her to handover possession of the suit premises only after one month of furnishing of such copies. On the other hand, the Defendant's Advocate submitted before this Court that the plan filed on behalf of the Plaintiff was not proved by examining any proper witness. He submitted that the plan was also not sanctioned by MCGM. He submitted that the plan did not show how many tenements were being constructed by the Plaintiffs and accordingly, there was no compliance of clauses (b) and (c) of Sub-Section (6) of Section 16 of the Act. The Defendant also submitted that there was no undertaking given by the Plaintiffs in terms of Section 16(6) of the Act, or, in other words, there was no compliance on the part of the landlords of even clause (d) of Sub-Section (6) of Section 16 of the Act. Let us now see how this Court dealt with these matters in its remand order of 30th August 2015.

11. The main parts of the order of this Court remanding the appeal are contained in paragraphs 14, 15 and 16. These are quoted below :-

“14. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, there is dispute between the parties as regards the exact area in possession of the defendants. On one hand, the plaintiffs claimed that the defendants are in possession of 200 sq. ft. carpet area and offered 240 sq. ft. carpet area, on the other hand, the defendants claimed that the suit premises admeasures 375 sq. ft. In the orders dated 13.06.2016 and 28.06.2016, statement made on behalf of the plaintiffs that without prejudice to the rights and contentions they are ready and willing to offer 375 sq. ft. carpet area to the defendant, was recorded. Mr. Narula has also made statement during the course of hearing, which

is recorded hereinabove. During the course of hearing, Mr. Narula stated that the plaintiff No.2 will file fresh undertaking in the appellate Court offering 375 sq. ft. carpet area to the defendant. In view thereof, insofar as the controversy in respect of area no longer survives.

15. In view of the contention advanced by Mr. Sasidharan that in terms of Section 16(6) of the Act, it is for the landlord to give undertaking. It is necessary for plaintiff No.2 being the landlord to give undertaking in terms of Section 16(6)(d) of the Act. Mr. Narula assures that within two weeks from the date of appearance, plaintiff no.2 landlord/owner will file fresh undertaking enclosing therewith plan prepared through registered Architech, with advance copy to other side, in terms of Section 16(6) of the Act incorporating therein, amongst others, :

- [i] That the plaintiffs are ready and willing to offer 375 sq. ft. carpet area to the defendant;
- [ii] The plaintiffs will furnish copies of Intimation of Disapproval (IOD) and sanctioned plans to the defendant and after one month of furnishing of these copies will call upon the defendant to hand over possession of the suit premises.

16. In view thereof, application is disposed of in following terms :

- [i] The impugned judgment and decree dated 17.02.2015 passed by the Appellate Bench of the Small Causes Court at Mumbai (Bandra) in (A-1) Appeal No. 3 of 2013 is quashed and set aside and appeal is restored to the file of Appellate Court. Parties agree that they will appear before the Appellate Court on 06.09.2016 and for that purpose no fresh notice be issued to them.
- [ii] Plaintiff No.2 landlord/owner shall file undertaking in

the aforesaid terms enclosing therewith plan prepared through registered Architect within two weeks from 06.09.2016 and shall serve copy in advance on the other side.

- [iii] The learned Appellate Court is requested to disposed of the appeal within three weeks from the date of appearance of the parties.
- [iv] All contentions of the parties, on merits, are expressly kept open.
- [v] Office is directed to remit R & P forthwith.
- [vi] Rule is made absolute in aforesaid terms with no order as to costs.”

12. It is apparent from what is quoted above that the only controversy before this Court concerned the correct area of the suit premises and the compliance on the part of the Plaintiffs-landlords of clauses (b), (c) and (d) of Sub-Section (6) of Section 16 of the Act. Remand was made only for a decision on these issues, after allowing the Plaintiffs to submit an undertaking as provided above. It is in the context of this position that the Appeal Court merely fixed points of determination concerning compliance with Section 16(6) of the Act and did not consider the other issues, which, according to the Court, had already attained finality.

13. The Appeal Court's approach appears to be reasonable and perfectly legitimate, indicating a possible view of the material before it. Learned Counsel for the Applicant (original Defendant) submits that the decree passed in his client's favour was of dismissal of the eviction suit. Learned counsel submits that he could urge every point including the questions on which the Court had held against him to support the eventual conclusion of the Court. Learned counsel relies on the case of

Guido Loyola Furtado Vs. National Insurance Co. Ltd¹. in support of his submission that as a respondent to the appeal, the Applicant herein could support the decree not only on grounds decided in her favour, but also grounds held against her without having to file any cross-objection. There is no quarrel with the proposition. The question is whether the Applicant, in fact did, on that basis, support the order. As noted above, the remand order made it very clear that the only issues which were debated before, and ruled on by, this court concerned (i) the correct area in occupation of the Defendant-tenant and the area he would be entitled to in the new building to be constructed at site and (ii) compliance with clauses (b), (c) and (d) of Sub-Section (6) of Section 16 of the Act on the part of the landlords. What was debated before the Court was that the plans and estimates of the new building were not properly prepared; that it was not shown that the new building would contain residential tenements of a member not less than the number of existing tenements sought to be demolished; and that there was no proper undertaking in terms of clause (d) of Section (6) of Section 16 of the Act. These were the only matters before this Court whilst deciding the earlier CRA. So far as the issue of area is concerned, there was a decision of this Court on that issue. The Court decided that in view of the offer made by the landlords to allot 375 sq.ft. carpet area., that issue no longer survived. So far as the compliance with clauses (b), (c) and (d) of Sub-Section (6) of Section 16 of the Act was concerned, the Court remanded the matter to the Appellate Court, after allowing the Plaintiffs-landlords to submit a fresh undertaking.

14. In these circumstances, it was perfectly legitimate for the Appellate Court to concern itself merely with compliance, if any, of clauses (b), (c) and (d) of Sub-Section (6) of Section 16 of the Act on the part of the landlords and nothing beyond that.

1 2013(5) ALL MR 624

15. Learned counsel for the Applicant, relying on the case of *Vijay Singh and Others Vs. Vijayalakshmi Ammal*², submits that it is imperative for a landlord, while seeking eviction of a tenant under Section 16(1)(i) of the Act, to satisfy the Court about various things including his bonafide intention, the age and condition of the building, and his financial position so as to enable him to demolish it and erect a new building in its place.

16. It is important to note that all these considerations reflect on the reasonable and bonafide need of the landlord to recover possession of the premises for immediate demolition and reconstruction of a new building. The first issue framed by the trial court was on such reasonable and bonafide need of the landlord and it was decided in favour of the Plaintiffs. The findings of the trial Court on this issue were affirmed by the Appeal Court. And no contention was advanced in that behalf before this Court, whilst seeking disposal of the Civil Revision Application by remand to the Appeal Court. If that be the case, it is no longer open to Defendant-tenant to rake up the same controversy before the remand court. The judgment in the case of *Vijay Singh (supra)* can be of no avail to her in the premises.

17. Coming now to the compliance of clauses (b), (c) and (d) of Sub-section (6) of Section 16, it is pertinent to note that the Plaintiffs-landlords had submitted a plan along with their undertaking before the Appeal Court. The plan showed the number of tenements to be constructed as well as the respective areas to be allotted to the tenants including the Defendant herein. It was submitted before the Court that possession of the suit premises would be sought only after IOD was issued and plans were sanctioned. The plans were, accordingly, in compliance with clauses (b) and (c) of Sub-Section (6) of Section 16 of the Act. The

2 (1996) 6 SCC 475

landlord also proceeded to furnish an undertaking, which included all five aspects of Sub-clause (d) of Sub-Section (6) of Section 16 of the Act. The plans and estimates of the new building were said to include premises for each tenant in accordance with the respective carpet areas in their occupation in the building sought to be demolished; alternative premises were, accordingly, to be offered to the tenants in the re-erected building of equivalent carpet areas; the work of demolition would commence not later than one month, and construction would commence not later than three months, from the date of recovery of possession; and the work of erection of the new building would be completed not later than fifteen months from the date of recovery of possession. All commitments were duly made by the landlords. There was, thus, a clear case of compliance with clause (d) of Sub-Section (6) of Section 16.

18. Learned counsel for the Applicant seeks to raise a cloud of suspension over some of these clauses. Learned counsel submits that the assessment of compliance of clause (d) of Sub-Section (6) of Section 16, on the part of the Appeal Court, has not been proper. This Court, whilst hearing a civil revision application, does not exercise appellate jurisdiction. In its revisional jurisdiction, this Court interferes with an order only on the grounds that the Court below has acted without jurisdiction or exceeded its jurisdiction or has come to a perverse finding, that is to say, a finding such as would not be rendered by any fair or judiciously minded person. There is no such case here. Accordingly, there is no merit in the challenge to the impugned order of the Appellate Bench of the Court of Small Causes.

19. The civil revision application is dismissed.

(S. C. GUPTE, J.)