

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL REVISION APPLICATION NO.106 OF 2018
WITH
CIVIL APPLICATION NO.479 OF 2018

Champalal Veerchand Jain (deceased)	]	
through Legal Heirs	]	
1a. Lehri Champalal Jain and another.	]	Applicants
Vs.		
Khadija Abbas Mungaye (deceased)	]	
1a. Latif Abbas Mungaye and another.	]	Respondents

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Mr. Rajesh Patil a/w Jeenal Upadhyay, learned Counsel for the Applicants.
 Ms. Farhana Shah, learned Counsel for Respondents No.2 and 4.

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CORAM : R.G. KETKAR, J.

DATE : 26th FEBRUARY, 2019.

P.C.

Heard Mr. Patil, learned Counsel for the applicants and Ms. Shah, learned Counsel for respondents No.2 and 4 at length.

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 10th January, 2018 passed by the learned District Judge-1, Mangaon, District Raigad in Regular Civil Appeal No.75 of 2008. By that order, the learned District Judge allowed the appeal preferred by the respondents, hereinafter referred to as "plaintiffs" and set aside the judgment and decree dated 27th June, 2005 passed by the learned Civil Judge (Junior Division) in Regular Civil Suit No.50

of 2001. The learned District Judge decreed the suit and directed the defendants to hand over vacant and peaceful possession of a Shop more particularly described in paragraph 4 of the plaint (for short 'suit premises') to the plaintiffs within two months from the date of the order.

3. The plaintiffs instituted suit against the defendants for recovery of possession of the suit premises, *inter alia*, invoking grounds under section 16 (1) (g) (reasonable and bona fide requirement) and 16 (1) (k) (that the suit premises are required for the immediate purpose of demolition ordered by any municipal authority or other competent authority) of the Maharashtra Rent Control Act, 1999 (for short 'Maharashtra Rent Act'). The plaintiffs contended that the building where the suit premises is situate is two storied building which is more than 100 years old. It is in a dilapidated condition and is likely to fall at any time. The plaintiffs contended that Gram Panchayat had issued notice dated 4th May, 2000 and 14th May, 2001. Even the Structural Engineer Imran Antule inspected the building and advised the plaintiffs to demolish the building. The plaintiffs, therefore, issued notice dated 19th may, 2001 to the defendants calling upon them to handover possession.

4. The plaintiffs further came with the case that plaintiff No.1 is a Pardanshin lady. She always remains sick. Plaintiff No.2, son of plaintiff No.1 resides with her. Plaintiff No.3 is sister of plaintiff No.2. She is widow. Plaintiff No.4 is married sister of plaintiff No.2. Her son is residing with plaintiffs No.1 to 3. Thus, in all five persons are residing together. Son of plaintiff No.4 is 12 years old and is taking education. He has no place for study. Thus, the plaintiffs claimed possession of the suit premises under section 16 (1) (g) and 16 (1) (k) of the Maharashtra Rent Act.

5. The defendants filed written statement denying assertions made in the plaint. The defendants denied that the building where the suit premises is situate is in a dilapidated condition. On the other hand, the defendants contended that condition of the building is excellent. The ground of bona fide requirement was also denied.

6. On the basis of the pleadings of the parties, the learned trial Judge framed the necessary issues. The parties adduced evidence in support of their respective case. After considering the evidence on record, by order dated 27th June, 2005, the learned trial Judge dismissed the suit. Aggrieved by that decision, the plaintiffs preferred appeal before the District Court. By the impugned order, the learned District Judge allowed the appeal and decreed the suit. It is against this order, the defendants have instituted the present C.R.A.

7. In support of this C.R.A, Mr. Patil submitted that in view of the subsequent developments, C.A. No.479 of 2018 is taken out by the defendants. In paragraph 11 of the Civil application, it is asserted that other three tenants adjacent to the suit premises viz; Narendra Dayal Thakkar (Premises No.1), Lalchand Devichand Jain (Premises No.2) and Khetmal Prakash jain (Premises No.4) have handed over possession of the respective premises to the plaintiffs in terms of the settlement arrived at between the parties. The plaintiffs have received possession of the said three premises. Requirement pleaded by the plaintiffs, therefore, does not subsist and in any case, the need is satisfied after plaintiffs obtaining possession of these three premises. He has also invited my attention to the reply filed by the plaintiffs wherein they have accepted about receiving possession of these three premises from the respective tenants. In view thereof, decree passed on the ground of section 16 (1) (g) of the Maharashtra Rent Act deserves to be set aside.

8. In so far as ground under section 16 (1) (k) of the Maharashtra Rent Act is concerned, Mr. Patil has invited my attention to section 13 (1) (hhh) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Bombay Rent Act'). The said section lays down that the landlord is entitled to recover possession of any premises if the Court is satisfied that the premises are required for the immediate purpose of demolition ordered by any **local authority** or other competent authority. In so far as provisions of section 16 (1) (k) of the Maharashtra Rent Act are concerned, it lays down that the landlord shall be entitled to recover possession of any premises if the Court is satisfied that the premises are required for immediate purpose of demolition ordered by any **municipal authority** or other competent authority. He submitted that expression "local authority" is defined in section 7 (6) of the Maharashtra Rent Act.

9. Mr. Patil invited my attention to section 11 of the Maharashtra Rent Act. For the purposes of sub-section (3) of section 11, the expression 'municipal authority' includes in the case of any Municipal Corporation, the Municipal Commissioner or any officer of the Municipal Corporation authorised by him in this behalf; in the case of any Municipal Council, the Chief Officer of the Council; and in the case of any Cantonment, the Executive Officer of the Cantonment. He submitted that if section 13 (hhh) of the Bombay Rent Act is compared with section 16 (1) (k) of the Maharashtra Rent Act, a Village Panchayat situate under Maharashtra Village Panchayats Act is not a Municipal Authority.

10. Mr. Patil has also invited my attention to the certificate dated 14th May, 2001 issued by Gram Panchayat, Mhasala. He submitted that the said certificate does not amount to notice or order as contemplated under section 16 (1) (k) of the Maharashtra Rent Act. It is not addressed to the defendants. It

is not an order of demolition of the building where the suit premises is situate. In any case, the so-called certificate is issued in the year 2001 and we are in the year 2019 and therefore, it cannot be said that the building is in a dilapidated condition which requires immediate demolition. He submitted that the plaintiffs have not established the requirements of section 16 (1) (k) of the Maharashtra Rent Act and, therefore, the learned District Judge was not justified in decreeing the suit. He, therefore, submitted that C.R.A requires consideration.

11. On the other hand, Ms. Shah has invited my attention to the finding recorded by the learned District Judge as also the evidence of Architect Imran Antule who was examined as P.W.5 in Regular Civil Suit No.52 of 2001 as also the finding recorded by the learned District Judge in Regular Civil Appeal No. 72 of 2008 (companion appeal). She has also invited my attention to the photographs annexed along with affidavit in reply filed by the plaintiffs to the Civil Application and also stability certificate dated 24th January, 2019 issued by Unik Consultants, Architect and Structural Engineers. The said Architects concluded that the building is unsafe ((Risky and dangerous to sustain its existing requirement and may result to the loss of life) hence immediate thought to be given for its future stability.

12. In so far as the ground of bona fide requirement is concerned, she submitted that because of the dilapidated condition of the building, the other tenants have surrendered premises in their respective possession. However, that does not satisfy the need of the plaintiffs. She, therefore, submitted that no case is made out for interfering with the impugned order.

13. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. In so far as

ground of reasonable and bona fide requirement is concerned, the plaintiffs have obtained possession of three premises from three tenants viz; Narendra Dayal Thakkar (Premises No.1), Lalchand Devichand Jain (Premises No.2) and Khetmal Prakash jain (Premises No.4). Area of the suit premises and area of the premises in possession of three tenants is identical. Thus, after receiving possession of three premises from the respective tenants, I am of the opinion that the requirement pleaded by the plaintiffs is satisfied. In case of **Seshambal (dead) through L.Rs Vs. M/s. Chelur Corporation, Chelur Building and others, AIR 2010 SC 1521**, the Apex Court has held that the subsequent events having bearing on the case had to be taken into consideration. If the need pleaded by the plaintiff is entirely eclipsed by subsequent events, the same have to be taken into consideration. Applying the tests laid down in the case of **Seshambal** (supra) to the facts and circumstances of the present case, I am satisfied that need pleaded by the plaintiffs is totally eclipsed and is not in existence as of date in view of the subsequent events.

14. In so far as ground under section 16 (1) (k) of the Act is concerned, the plaintiffs have contended that the building where the suit premises is situate is more than 100 years old. In a companion suit i.e in Regular Civil Suit No.52 of 2001, the plaintiffs have examined Imran Antule as P.W.5 at Exhibit 78. He deposed that on 10th May, 2001, he had inspected the building. On the basis of the inspection, he prepared certificate at Exhibit 92. He noticed that the suit building is in a dilapidated condition and the said is more than 100 years old. Evidence of P.W.5 Imran Antule was considered by the learned District Judge in Regular Civil Appeal No.72 of 2008 in paragraphs 36 and 37. After considering the evidence of Imran Antule, the learned District Judge observed that though he was cross-examined at length, nothing has been brought on record to disbelieve his evidence. Thus, the evidence of P.W.5 Imran Antule is acceptable.

15. Along with reply filed to Civil Application No.479 of 2018, photographs depicting the condition of the building where the suit premises is situate are annexed. Mere perusal of the photographs will show that condition of the building is precarious and is likely to fall at any moment. Certificate of stability dated 24th January, 2019 of Unik Consultants, Architect-Structural Engineers is to the following effect;

“Based on the visual observations, visual symptoms and manifestations shown by the structure and the present condition at the above mentioned site are as follows. Existing Structure Condition:

.The plinth of the building has become almost invisible because of extra filling of the land and Main Road, hence it was difficult to observe the cracks in it and the settlement of the foundation.

.The building is around 120 years old, load bearing Brick wall in mud mortar had lost the hardness it loosened and mud started coming out which makes the wall unsafe. It has developed deep cracks at various points and surfaces, hence, extremely dangerous for any kind of movements, vibrations and earthquake shock.

.The timber structures (lintol, doors, planks, beams, battens etc.) are found to be in decompose situation (attacked by termites), very bad, and deteriorated conditions and its strength is lost. With minor earthquake shock anytime it can collapse. Since the building was constructed in old style, it is not having proper light, ventilation and facilities and other amenities.

.The stability of the structure is assessed only for dead and live load and that too, based on the visual observations of superstructure and it cover risk rising due to the exposed to rain, earthquake, wind, fire, vibrations etc. and any other unforeseen forces causing distress and instability to the structure.

Conclusion: The Structure House No.554 its stability is unsafe.

The building is unsafe, (Risky & dangerous to sustain its existing requirement and may result to the loss of life) hence immediate thought to be give for its future stability”.

16. In so far as the impugned order is concerned, the learned District Judge has considered this ground in paragraphs 36, 37 and 46. Mr. Patil relied on the evidence of Pralhad Narhar Padlikar who was examined as defendants' witness in Regular Civil Suit No.51 of 2001 at Exhibit 74. The learned District Judge also considered his evidence in paragraphs 43 and 44. In paragraph 44, the learned District Judge observed that according to him, he can opine the life of the building but cannot opine the age of the building. He admitted that notice was not given to the plaintiffs before inspection. He admitted that he did not inquire with Gram Panchayat about the said building. From paragraphs 58 to 60, the learned District Judge referred to the other evidence on record as also certificate dated 14th May, 2001 at Exhibit 60 issued by Gram Panchayat. In paragraph 60, the learned District Judge concluded that the suit premises is in a dilapidated condition. Construction of the building was prior to the year 1935. Evidence adduced by the plaintiffs and documents submitted in support of their claim are found to be probable and acceptable. Thus, the findings recorded by the learned District Judge are based upon the evidence on record. It cannot be said that the findings recorded by the learned District Judge are perverse, being based upon no evidence or that they are contrary to the evidence on record.

17. Mr. Patil relied on section 13 (1) (hhh) of the Bombay Rent Act and section 16 (1) (k) of the Maharashtra Rent Act to contend that Village Panchayat is not a municipal authority and, therefore, no reliance can be placed on certificate dated 14th May, 2001. In any case, that is neither order nor notice of any municipal authority or competent authority. I do not find any merit in this submission. Section 18 (2) of the Maharashtra Regional and Town Planning Act, 1966 (for short 'M.R.T.P Act') as substituted by Maharashtra 43 of 2014 dated 29th December, 2014 lays down that notwithstanding anything contained in any other law for the time being in force, the Village Panchayat

or, as the case may be Collector in considering application for permission shall have due regard to the provisions of any draft or Regional plan or proposal published by means of a notice under this Act. It is no doubt true that Village Panchayat had issued certificate dated 14th May, 2001 i.e prior to amendment in the M.R.T.P Act. However, during pendency of the proceedings, section 18 is amended. The Village Panchayat is a local unit of the Governance. Section 52 of the Village Panchayat Act lays down that no person shall erect or re-erect or commence to erect or re-erect any building within the limits of Village without previous permission of the Panchayat. Thus, in so far as the Village Panchayat is concerned, erection of the building is under the control of Village Panchayat. Thus, the contention of Mr. Patil that Village Panchayat is not a **municipal authority** loses significance in view of the amendment to section 18 of the M.R.T.P Act.

18. In the case of **Shri M.L. Sethi vs. Shri R.P. Kapur, (1972) 2 SCC 427**, the Apex Court has considered the scope of revision under Section 115 of C.P.C. In paragraph 12 of that decision, the Apex Court observed that the jurisdiction of the High Court under Section 115 of C.P.C. is a limited one. The Apex Court considered following decisions :

- (i) **Rajah Amir Hassan Khan vs. Shoo Baksh Singh, (1884) LR 11 IA 237;**
- (ii) **Balakrishna Udayar vs. Vasudeva Aiyar, (1917) LR 44 IA 261, 267;**
- (iii) **N.S. Venkatagiri Ayyangar vs. Hindu Religious Endowments Board, Madras, (1948-49) LR 76 IA 73;**
- (iv) **Manindra Land and Building Corporation Ltd., vs. Bhutnath Banerjee and others, AIR 1964 SC 1336;**
- (v) **Vora Abbasbhai Alimahomed vs. Haji Gulamnabi Haji Safibhai, AIR 1964 SC 1841; &**
- (vi) **Pandurang Dhuni Chowgule vs. Maruti Hari Jadhav, AIR 1966 SC 153.**

19. The Apex Court quoted the observations of Privy Council in **Rajah Amir Hasan Khan** (supra) which is to the following effect :

“The question then is, did the judges of the lower Courts in this case, in the exercise of their jurisdiction, act illegally or with material irregularity. It appears that they had perfect jurisdiction to decide the question which was before them, and they did decide it. Whether they decided rightly or wrongly, they had jurisdiction to decide the case; and even if they decided wrongly, they did not exercise their jurisdiction illegally or with material irregularity.”

20. The Apex Court further quoted its observations in the case of **Pandurang Chowgule** (supra) as under :

“The provisions of Section 115 of the Code have been examined by judicial decisions on several occasions. While exercising its jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross they may be, or even errors "of law, unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. As clauses (a), (b) and (c) of Section 115 indicate, it is only in cases where the subordinate Court has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the revisional jurisdiction of the High Court can be properly invoked. It is conceivable that points of law may arise in proceedings instituted before subordinate courts which are related to questions of jurisdiction. It is well settled that a plea of limitation or a plea of res judicata is a plea of law which concerns the jurisdiction of the Court which tries the proceedings. A finding on these pleas in favour of the party raising them would oust the jurisdiction of the court and so, an erroneous decision on these pleas can be said to be concerned with questions of jurisdiction which fall within the purview of Section 115 of the Code. But an erroneous decision on a question of law reached by the subordinate court which has no relation to questions of jurisdiction of that court, cannot be corrected by the High Court under Section 115.”

21. The above decision reiterates that under Section 115 of C.P.C., the High Court has to satisfy itself on three matters, namely;

- (a) that the order of the subordinate Court is within its jurisdiction;
- (b) that the case is one in which the Court ought to exercise jurisdiction, and
- (c) that in exercising jurisdiction the Court has not acted illegally, that is, in breach of some provisions of law, or with material irregularity, that is, by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision. If the High Court is satisfied on these three matters, it has no power to interfere because it differs from conclusion of the subordinate Court on question of facts or of law.

22. Applying the tests laid down by the Apex Court, as aforesaid, to the facts of the present case, it cannot be said that the defendants have made out a case for invocation of powers under Section 115 of C.P.C. The defendants are not in a position to demonstrate that the findings recorded by the District Court 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 at by the District Court. 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. Hence, no case is made out for invocation of powers under Section 115 of C.P.C. Civil Revision Application fails and the same is dismissed with no order as to costs. In view of dismissal of C.R.A, C.A. No.479 of 2018 is disposed of.

23. At this stage, Mr. Patil orally prays for stay to eviction decree for a period of 12 weeks from today. He assures that within three weeks from

today, the defendants and all adult family members using the suit premises will file usual undertaking in this Court after giving advance copy to the other side incorporating therein that;

- (a) they are in possession and nobody else is in possession of the suit premises;
- (b) they have neither created third party interest nor parted with possession of the suit premises;
- (c) they will hereafter neither create third party interest nor part with possession of the suit premises;
- (d) within two weeks from today, the defendants will deposit arrears of rent, if any, in this Court under intimation in writing to the learned Counsel for the plaintiffs.
- (e) in case they are unable to obtain suitable orders from the higher Court within 12 weeks from today, they will hand over vacant and peaceful possession of the suit premises to the respondents/plaintiffs.

24. In view thereof, notwithstanding dismissal of C.R.A, eviction decree shall not be executed for a period of 12 weeks from today, subject to the defendants filing undertaking in the aforesaid terms within three weeks from today. It is expressly made clear that in case the undertaking is not filed in the aforesaid terms within three weeks from today and/or in case defendants commit breach of any of the conditions of the undertaking, ad-interim order shall stand vacated without further reference of the Court. Order accordingly.

25. **List the C.R.A for compliance on 26th March, 2019.**

[R.G. KETKAR, J.]