

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL REVISION APPLICATION NO.640 OF 2018
WITH
CIVIL APPLICATION NO.699 OF 2018

Jaywant Mahadeo Mate	]	Applicant
Vs.		
Pushpak Jugmandar Shah	]	Respondent

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Mr. Vasant G. Adsul, learned Counsel for the Applicant.
Mr. N.M. Deshpande, learned Counsel for the Respondent.

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CORAM : R.G. KETKAR, J.

DATE : 13TH MARCH, 2019.

P.C.

Heard Mr. Adsul, learned Counsel for the applicant and Mr. Deshpande, learned Counsel for the respondent at length.

2. By this application under section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C'), the applicant, hereinafter referred to as 'defendant' has challenged the judgment and decree dated 2nd June, 2018 passed by the learned District Judge-7, Pune in Regular Civil Appeal No.280 of 2013. By that order, the learned District Judge allowed the appeal preferred by the respondent, hereinafter referred to as 'plaintiff' and set aside the judgment and decree dated 18th February, 2013 passed by the learned 6th Additional Judge, Small Causes Court, Pune in Regular Civil Suit No.166 of 2007. The learned District Judge decreed the suit on the grounds under sections 15, 16 (1) (c) and 16 (1) (g) of the Maharashtra Rent Control Act, 1999 (for short 'Act') and directed the defendant to hand over possession of Shed No.2 in

Survey No.39/1A/2/4/1 of Village Mouje Vadgaon Budruk within the Pune Municipal Corporation limits, more particularly described in paragraph 1 of the plaint (for short 'suit premises'). The learned District Judge has also directed holding of inquiry under Order-XX, Rule-12 of the C.P.C.

3. The plaintiff instituted the suit against the defendant for recovery of possession of the suit premises, *inter alia*, contending that the suit premises was let out by the plaintiff's father during his lifetime to the defendant for 120 months commencing from 1st February, 1992 on monthly rent of Rs.1100/- upto 31st January, 1997 and thereafter @ Rs.1800/- per month. On 15th April, 2006, the plaintiff issued demand notice (Exhibit 25) calling upon the defendant to pay arrears of rent for the period from 1st April, 2004 to 31st May, 2006 @ Rs.2700/- per month i.e Rs.70,200/- and for period between 1st June, 2006 to 28th February, 2007, Rs.30,189/- inclusive of taxes. The plaintiff contended that instead of complying the notice, the defendant paid only amount of tax. The plaintiff, therefore, sought decree of eviction on the ground of arrears of rent as contemplated by section 15 of the Act.

4. The plaintiff also came with the case that the suit premises is required reasonably and bona fide for expansion of present business of Mangal Karyalaya as the suit premises is adjacent to Mangal Karyalaya. In case, eviction decree is refused, he will suffer greater hardship. Thus, the plaintiff claimed possession under section 16 (1) (g) of the Act.

5. The plaintiff further came with the case that the defendant used to abuse the landlord and lodge false complaints with the Police Authorities, thereby, committing nuisance and annoyance. The plaintiff, therefore, claimed possession on the ground under section 16 (1) (c) of the Act.

6. The defendant resisted the suit by filing written statement at Exhibit 10 denying the contentions raised by the plaintiff. The defendant contended that the suit premises falls in industrial zone and, therefore, the provisions of the Act are not applicable. The defendant denied that he has committed default in payment of rent. The defendant further contended that he will suffer greater hardship in case eviction decree is passed.

7. On the basis of the pleadings of the parties, the learned trial Judge framed the necessary issues at Exhibit 13. After considering the evidence on record, the learned trial Judge dismissed the suit. Aggrieved by that decision, the plaintiff preferred appeal. By the impugned order, the learned District Judge decreed the suit under sections 15, 16 (1) (c) and 16 (1) (g) of the Act. It is against this order, the defendant has instituted the present C.R.A.

8. In support of this application, Mr. Adsul has strenuously contended that the learned District Judge was not justified in decreeing the suit under section 15 of the Act. He has taken me through the affidavit of evidence filed by the plaintiff. He submitted that the defendant had paid Rs.72,000/- and thus, had paid rent in advance up to the year 2020. The plaintiff demanded rent @ Rs.2700/- per month when the contractual rent is Rs.1800/- per month. He submitted that a perusal of the table extracted in the evidence of the plaintiff would indicate that the defendant was paying rent @ Rs.1800/- per month and, therefore, the notice of demand claiming excessive rent itself is illegal. He also relied on the decision of this Court in **New Laxmi Cycle Company, Akola Vs. Jagdishchandra s/o Amrutlal Vakharia, 2009 (6) Mh. L.J 906** and in particular Head Note 'D' which is to the following effect;

“(d)Maharashtra Rent Control Act, 1999 (18 of 2000), S. 11- Increase of rent by 4% per annum- Permissibiity- Section 11 entitles the landlord to increase rent by 4% per annum after

its commencement-Said increase by 4% is not automatic but at the discretion of the landlord – If a particular landlord does not want to increase rent by 4%, law does not compel him to increase it_ The tenant is not voluntarily required to pay 4% more”.

9. As far as the ground of reasonable and bona fide requirement under section 16 (1) (g) of the Act is concerned, he relied on **Gopal Vishnu Vanarase Vs. Mahadev Govind Khire, 1999 (3) Bombay Cases Reporter, 174** to contend that no plans were produced by the plaintiff to substantiate the requirement of expansion of Mangal Karyalaya. As the plaintiff has not produced permission of the Planning Authority for expansion of Mangal Karyalaya, the learned District Judge was not justified in passing eviction decree under section 16 (1) (g) of the Act. He further submitted that Mangal Karyalaya is not industry and as the suit premises is situate in industrial zone, it will be impermissible for the plaintiff to expand business of Mangal Karyalaya after obtaining possession of the suit premises.

10. In so far as the ground of nuisance and annoyance under section 16 (1) (c) of the Act is concerned, he invited my attention to the finding recorded by the learned District Judge in paragraphs 22 and 23. He submitted that basically the plaintiff did not establish that the alleged nuisance and annoyance is caused to the neighbouring occupiers. In support of this submission, he relied on the decision of **New Laxmi Cycle Company, Akola** (supra) to contend that as there is no nuisance and annoyance to the adjoining or neighbouring occupiers, the learned District Judge was not justified in passing eviction decree under section 16 (1) (c) of the Act.

11. Lastly, Mr. Adsul submitted that the defendant relied on as much as 9 judgments filing pursis at Exhibit 19. Though the learned District Judge has referred to this fact in paragraph 12 of the impugned order, he did not deal

with various citations relied on by the defendant. For all these reasons, he submitted that application requires consideration.

12. On the other hand, Mr. Deshpande supported the impugned order. He has relied upon Nazir's report dated 7th December, 2017 at Exhibit 110 before the trial Court. Nazir has submitted report to the effect that on 8th February, 2013, the defendant deposited Rs.5400/-. He submitted that the suit was dismissed on 18th February, 2013. During pendency of the appeal and Civil Revision Application as also even till date, the defendant has not deposited the amount of rent post February, 2013. Even, the learned trial Judge in paragraph 24 observed that the defendant did not deposit rent for a period of four months from 1st June, 2006 to September, 2006. Thus, even during pendency of the suit, the defendant was not regular in depositing the rent in the trial Court. He has taken me through the finding recorded by the learned District Judge dealing with the ground of arrears of rent and submitted that the learned District Judge was justified in passing eviction decree under section 15 of the Act.

13. In so far as the ground under section 16 (1) (g) of the Act is concerned, he submitted that the learned District Judge has considered this ground in paragraphs 24 to paragraph 38. The learned District Judge observed that the plaintiff is running Mangal Karyalaya in front of the suit premises and for expansion of the business, he requires the suit premises reasonably and bona fide as the premises occupied by Mangal Karyalaya are not sufficient for him. The learned District Judge also dealt with Development Control Rules of the Corporation and observed that conversion of the user is permissible though it is questionable whether one can run Mangal Karyala within the industrial zone, it is for the local authority to decide and initiate action. Even the defendant can approach the Corporation. He, however, cannot dictate to close

on going business. He, therefore, submitted that the learned District Judge was justified in passing eviction decree under section 16 (1) (g) of the Act.

14. In so far as ground under section 16 (1) (c) of the Act, namely nuisance and annoyance is concerned, he submitted that the evidence adduced by the plaintiff remained un-rebutted and in fact, the plaintiff's witness was not cross-examined on the ground of nuisance and annoyance. As the evidence of the plaintiff's witness remained unchallenged on this ground, no fault can be found with the judgment of the learned District Judge in decreeing the suit under section 16 (1) (c) of the Act. Hence, no case is made out for interfering with the impugned judgment.

15. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. As mentioned earlier, the plaintiff had issued demand notice dated 15th April, 2006 claiming arrears of rent from 1st April, 2004 to 31st May, 2006. A perusal of paragraph 24 of the trial Court's judgment shows that the learned trial Judge has referred to Nazir's report at Exhibit 110. As per that report, the defendant deposited rent after 1st October, 2006 and the defendant did not deposit rent from 1st June, 2006 to 30th September, 2006 i.e for a period of four months. In so far as judgment of the District Judge is concerned, the learned District Judge also referred to the report of Nazir at Exhibit 110 in paragraph 18. In paragraph 19, the learned District Judge observed that the defendant did not pay interest @ of 15% per annum and thus contravened section 15 (3) of the Act. Mr. Deshpande submitted that after the suit was dismissed on 18th February, 2013, the defendant has not deposited any rent during pendency of the appeal as also during pendency of the C.R.A and even till date. Mr. Adsul could not controvert this submission.

16. In the case of **Bhaskar Bhagwant Shinde Vs. Vasudha Madhukar Kadam, 2005 (3) Mh. L. J, 428**, the learned Single Judge of this Court (Coram: Ranjana Desai, as Her Ladyship then was) observed in paragraph 33 thus;

“33. Therefore, a tenant who does not avail of benefit under section 12(3) cannot get its benefit at the appellate stage by contending that appeal is continuation of a suit. But on that basis a tenant who contends that he has deposited arrears in the trial Court as per section 12 (3) cannot stop depositing arrears in the Appellate Court by contending that he was obliged to pay arrears only in the trial Court and appeal is not extension of the suit and, therefore, he need not pay rent in the Appellate Court at all and if he does not deposit, the landlord has to file a fresh suit. The tenant would in effect be contending that the Appellate Court is powerless to deal with such a tenant. Such can never be the intention of the legislature. In my opinion the judgment of the Supreme Court in Damle's case (supra) is not applicable to the present case because, it arose out of different facts. It does not even remotely suggest that defaulting tenants should be allowed to misuse section 12(3). In fact the Supreme Court has observed that this provision is not intended to confer a right without circumspection to be availed of by the tenant at any time according to his convenience. Therefore, the judgment of the Supreme Court in Damle's case (supra) does not further the petitioner's case. In this connection. I may refer to *M/s. Goodyear India Ltd. vs. State of Haryana and another, AIR 1990 SC 781*, where the Supreme Court has held that it is well settled that a precedent is an authority only for what it actually decides and not for what may remotely or even logically follow from it”.

In view thereof, I do not find that the learned District Judge committed any error in passing eviction decree under section 15 of the Act.

17. In so far as eviction decree under section 16 (1) (g) of the Act is concerned, the plaintiff has claimed possession on the ground that he requires the suit premises for expansion of Mangal Karyalaya. A perusal of the trial Court's judgment and in particular paragraph 25 shows that approach of the learned trial Judge was wholly perverse. When the plaintiff comes with the

case of bona fide requirement, the Court has to presume that need pleaded by the plaintiff is reasonable and bona fide. It is for the defendant/tenant to establish that the need pleaded by the plaintiff is mala fide. No evidence is adduced by the defendant to show that need pleaded by the plaintiff is mala fide. In fact, the learned trial Judge observed in paragraph 25 that expansion of existing business does not amount to reasonable requirement.

18. As against this, the learned District Judge has considered the ground of bona fide requirement from paragraphs 24 to 37 and after re-appreciating the entire evidence on record, including the decision of **Gopal Vishnu Vanarase** (supra), he observed that Mangal Karyalaya is already functioning and the requirement pleaded by the plaintiff is for expansion of the existing business. The decision of **Gopal Vishnu Vanarase** (supra) is not applicable to the facts of the present case. For the reasons recorded in paragraphs 24 to 37, I do not find that the learned District Judge has committed any error in passing eviction decree under section 16 (1) (g) of the Act.

19. In so far as eviction decree under section 16 (1) (c) of the Act is concerned, the learned District Judge has considered this ground in paragraphs 22 and 23. The learned District Judge observed that evidence on record of the plaintiff shows that the defendant used to abuse landlord and lodge complaints to the Police Authorities. Evidence of the plaintiff's witness of this ground remained un-rebutted. Mr. Deshpande submitted that in fact the defendant did not cross-examine the plaintiff's witness as regards ground of nuisance and annoyance. Mr. Adsul could not controvert this submission. As the plaintiff's testimony remained unchallenged, I do not find that the learned District Judge committed any error in passing eviction decree under section 16 (1) (c) of the Act. Even otherwise, if it is held that the plaintiff has not established ground of

nuisance and annoyance under section 16 (1) (c) of the Act, none the less the decree passed by the learned District Judge under sections 15 and 16 (g) of the Act deserves to be upheld.

20. Mr. Adsul relied on these decisions;

- [1] S.P. Chengalvaraya Naidu Vs. Jagannath, AIR 1994 Supreme Court,853.
- [2] Sandeepkumar Vs. Nihalchand, (2014) 207 DLT, 104.
- [3] Ram Chandra Singh Vs. Savitri Devi, (2003) 8 Supreme Court Cases 319.
- [4] Gopal Vishnu Vanarase Vs. Mahadev Govind Khire, 1999 (3) Bombay Cases Reporter, 174
- [5] Mranalini Shah Vs. Bapalal Mohanlal Shah, AIR 1980 Supreme Court 954.
- [6] Nirakar Das Vs. Gourhari Das, AIR 1995 Orissa 270.
- [7] State of West Bengal Vs. Subimal Kumar Mondal, AIR 1982 Calcutta 251.
- [8] Modern Hotel, Gudur Vs. Radharishnaiah, AIR 1999 Supreme Court 1510.
- [9] Rasik Lal Vs. Shah Gokuldas, AIR 1989 Supreme Court 920.

21. In the case of **S.P. Chengalvaraya Naidu** (supra) and **Ram Chandra Singh**, (supra), the Apex Court was dealing with plea of fraud. In my opinion, these decisions are not applicable to the facts of the present case. In paragraphs 27 and 30 of **Sandeepkumar** (supra) 's case, the learned Single Judge of the Delhi High Court held that the party is required to approach the Court with clean hands by making full disclosure of all the facts. No litigant can derive benefit from a Court of law of his own wrongs. In my opinion, the

said decision is not applicable to the facts of the present case. In so far as reliance placed on the decision of **Mranalini B. Shah** (supra) is concerned, the Apex Court held that the provisions of section 12 (3) (b) are mandatory and are not directory. In fact, this judgment supports the plaintiff. In so far as decision of **Nirakas Das** (supra) is concerned, the learned Single Judge of the Orrissa High Court (Arijit Pasayat, J. as His Lordship then was) held that the plaintiff must establish his own case. Mere failure of defendant to establish his case will not automatically enable the plaintiff to succeed. In my opinion, this judgment has no application to the facts of the present case. In the case of **State of W.B.** (supra), it was held that the burden to prove title is on the plaintiff. This decision has also no application to the facts of the present case. In so far as decision of **Modern Hotel, Gudur** (supra) is concerned, in that case, the landlord was holding big amount of tenants account for years against clear statutory bar. In that context, it was held that failure of tenant to pay rent for some months will not be sufficient to hold that the tenant was defaulter. In my opinion, the said decision is not applicable to the facts of the present case. In so far as reliance placed on the decision of **Rasik Lal** (supra) is concerned, in that case the landlord accepted accumulated rents without any objection. It was held that on the ground of default in payment of rent is not permissible. In my opinion, this decision does not advance case of the defendant.

22. For the reasons recorded earlier, I do not find that these decisions advance case of the defendant. The defendant is not in a position to demonstrate that the findings recorded by the learned District Judge are perverse being based on no evidence or that on the basis of material on record, no reasonable or prudent person would have come to the conclusion arrived at by the learned District Judge. Defendant is not in a position to show that the findings are contrary to the evidence on record. Merely because on the basis of the material on record, another view is possible that, by itself, is no ground for

exercising the powers under section 115 of C.P.C. In the result, the Civil Revision Application fails and the same is dismissed.

23. In view of dismissal of C.R.A, C.A. No.699 of 2018 for stay of eviction decree does not survive and as such the same is disposed of.

[R.G. KETKAR, J.]