

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.498 OF 2019

WITH

WRIT PETITION NO.541 OF 2019

J. J. Technical Institute Pvt. Ltd.	]	
through Director	]	
Unmesh Prabhakar Joglekar	]	Petitioner
Vs.		
Mohan Hanumant Tulpule	]	Respondent
.....		
Mr. Vaibhav P. Patankar, for the Petitioner.		
Mr. Shailendra S. Kanetkar, for the Respondent.		
.....		

CORAM : R.G. KETKAR, J.

DATE : 17th JANUARY, 2019.

P.C.

Not on board. At the request of Mr. Patankar, taken up for admission.

2. Heard Mr. Patankar, learned Counsel for the petitioner and Mr. Kanetkar, learned Counsel for the respondent in both the Petitions.

3. Writ Petition No.498 of 1999 takes exception to the order dated 20th July, 2018 passed by the learned District Judge-6, Pune below Exhibit 34 in Civil Appeal No.595 of 2016. That appeal is instituted by the petitioner challenging the judgment and decree dated 30th March, 2016 passed by learned 4th Additional Judge, Small Causes Court, Pune in Civil Suit No.69 of 2005. By that order, the learned trial Judge decreed the suit instituted by the respondent and directed the petitioner/defendant to hand over possession of

one Block situate on the first floor in the building situate at CTS No.780/5, Shivajinagar, Pune. The suit was decreed under section 16 (1) (n) of the Maharashtra Rent Control Act, 1999 (for short 'Act').

4. Writ Petition No.541 of 1999 takes exception to the order dated 20th July, 2018 passed by the learned District Judge-6, Pune below Exhibit 38 in Civil Appeal No.594 of 2016. That appeal is instituted by the petitioner challenging the judgment and decree dated 30th March, 2016 passed by learned 4th Additional Judge, Small Causes Court, Pune in Civil Suit No.68 of 2005. By that order, the learned trial Judge decreed the suit instituted by the respondent and directed the petitioner/defendant to hand over possession of office premises admeasuring approximately 230 square feet situate on the first floor in the building situate at CTS No.780/5, Shivajinagar, Pune. The suit was decreed under section 16 (1) (n) of the Act.

5. During pendency of the appeals, the petitioner filed applications for stay. As the petitioner did not pay interim compensation fixed by the District Judge, this Court vide order dated 20th September, 2017 recorded a statement of the petitioner that without prejudice to the rights and contentions in the pending appeals before the Appeal Court, the petitioner will hand over possession of the suit premises to the respondent/landlord within 4 weeks from the date of the order. In pursuance thereof, the petitioner handed over possession of the suit premises in both the Petitions to the landlord. During pendency of the appeals, the landlord filed applications Exhibit 34 and Exhibit 38 seeking permission to re-develop the property where the suit premises are situate. The petitioner opposed the applications by filing reply. By the impugned orders, the learned trial Judge has allowed the applications subject to the respondent filing undertaking as contemplated by section 16 (1) (i) of the Act.

6. In support of these Petitions, Mr. Patankar strenuously contended that the learned District Judge was not justified in passing the impugned orders and permitting the respondent to file undertaking as contemplated by section 16 (1) (i) of the Act. In the first place, the respondent did not submit any structural audit report of the building. Secondly, the building is not in a dilapidated condition so as to demolish it and re-construct new building in its place. Thirdly, the respondent did not invoke ground under section 16 (1) (i) of the Act. The suit was decreed only under section 16 (1) (n) of the Act namely non user of the suit premises for more than six months preceding the date of filing of the suit without reasonable cause. In such circumstances, the learned District Judge was not justified in passing the impugned orders. Hence, Petitions require consideration.

7. On the other hand, Mr. Kanetkar supported the impugned orders. He submitted that admittedly the petitioner has surrendered possession of the suit premises to the respondent. The building where the suit premises is situated was constructed in the year 1946 or thereabout and remaining construction was made in the year 1969-1970. In the applications itself, the respondent/plaintiff has given undertaking to keep aside area equivalent to that of the suit premises i.e subject matter of the alleged tenancy of the petitioner in the building that would be newly built; to get the plan sanctioned or cause to be sanctioned by keeping, reserving and earmarking the area equivalent to the suit premises; submit such sanctioned plan to the District Judge in the appeal proceeding; not to create third party interest in respect of such area equivalent to area of the suit premises till final decision of the appeals and abide by any such term and condition put by the District Court from time to time.

8. Mr. Kanetkar submitted that the respondent also made it clear that after the building is demolished and re-developed, in case the appeals are decided in favour of the petitioner, he is required to pay standard rent considering the circumstances by that particular time as per the provisions of law. He, therefore, submitted that no case is made out for interfering with the impugned orders.

9. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. It is not in dispute that though the respondent invoked ground under section 16 (1) (g) and 16 (1) (a) r/w section 108 (o) of the Transfer of Property Act, 1882 and section 16 (1) (n) of the Act, the learned trial Judge decreed the suit only under section 16 (1) (n) of the Act. It is also not in dispute that the petitioner was unable to pay/deposit interim compensation fixed by the District Court. In view thereof, the petitioner has surrendered possession of the premises in both the Petitions to the respondent. A perusal of the impugned orders shows that the learned District Judge has noted these facts and observed that re-development is necessary to avoid mishap. Having regard to the fact the building was constructed in the year 1946 or thereabout and remaining part is constructed in or about 1969-1970, I do not find that prayer made by the respondent for demolishing existing structure and re-constructing new building in it's place is un-reasonable. At the same time, the respondent has also taken care of interest of the petitioner by giving undertaking in the applications itself. In addition to it, the learned District Judge has also directed the respondent to furnish the undertaking as contemplated by section 16 (1) (i) of the Act. Thus, adequate precaution is taken for protecting interest of the petitioner in case he succeeds in the appeals. It is neither desirable not in the interest of anybody to keep the premises as it is, particularly when the petitioner is not in possession and has surrendered possession of the suit premises to the respondent.

10. In view thereof, I do not find that the learned District Judge has committed any error in passing the impugned orders. Undertaking given by the respondent in paragraph 5, clauses (a) to (f) in application Exhibit 34 dated 11th January, 2018 in Civil Appeal No.595 of 2016 and application Exhibit 38 dated 11th January, 2018 in Civil Appeal No.594 of 2016 are accepted as undertakings given to this Court. In addition to it, the respondent will file undertaking as contemplated by section 16 (1) (i) of the Act before the District Court. After obtaining the sanctioned plan for constructing the new building, the respondent will submit the sanctioned plan to the District Court and thereafter will start demolition of the suit building.

11. In view of the aforesaid discussion, the Petitions fail and the same are dismissed with no orders as to costs.

[R.G. KETKAR, J.]