

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL REVISION APPLICATION NO.564 OF 2016

Mohammed Yusuf Mohammed Ali Khan	]	
(since deceased) through LRS	]	
Khan Umar Mohommed Yusuf and others.	]	Applicants
Vs.		
Mohammed Raza Hazi Rajjab Ali Ansari	]	
and others.	]	Respondents

.....

Mr. R.M. Haridas i/b Amol P. Mhatre, for Applicants.

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CORAM : R.G. KETKAR, J.

DATE : 7TH JANUARY, 2019.

P.C.

Heard Mr. Haridas, learned Counsel for the applicants 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 7th February, 2009 passed by the learned Civil Judge, Junior Division, Bhiwandi in R.C.S No.424 of 2001 as also the judgment and decree dated 7th April, 2016 passed by the learned District Judge-4, Thane in Civil Appeal No.32 of 2009. By these orders, the Courts below decreed the suit instituted by the respondents, hereinafter referred to as "plaintiffs" and directed the defendants to hand over possession of Power Loom shed admeasuring 36'x57' having capacity of 30 Power Looms situate in Municipal House No.112/1, Narpoli Part I, Bhiwandi (for short 'suit premises') to the plaintiffs. The Courts below have decreed the

suit under sections 15 and 16 (1) (b) of the Maharashtra Rent Control Act, 1999 (for short 'Act').

3. In support of this application, Mr. Haridas has taken me through the assertions made by the plaintiffs in paragraph 6 of the plaint in respect of ground of additions and alterations of permanent nature as contemplated by section 16 (1) (b) of the Act and paragraph 9 of the written statement filed by the defendants. He has also invited my attention to the recital in the tenancy agreement dated 18th November, 1985, Exhibit 30 which prohibits the defendants from carrying out any change in the construction without written permission of the plaintiffs. The agreement enables the plaintiffs to carry out construction by laying RCC slab and the defendants will not raise objection. Mr. Haridas has also invited my attention to the cross-examination of the defendants' witness.

4. Mr. Haridas submitted that the defendant volunteered that the plaintiffs have installed windows in addition to the existing one window each in the eastern and western wall. He submitted that the Courts below committed serious error in holding that without written permission of the plaintiffs, the defendants have installed two windows in addition to the existing two windows, one each in the eastern and western wall. In any case, he submitted that in view of explanation to section 16 (1) (b) of the Act, opening of a window is necessary for ventilation. He submitted that the suit premises is situated in Bhiwandi town which is thickly populated. It is, therefore, necessary for the defendants to install windows for necessary ventilation as also for beneficial enjoyment of the suit premises. He, therefore, submitted that the Courts below were not justified in passing the decree under section 16 (1) (b) of the Act.

5. As far as ground of arrears of rent as contemplated by section 15 of the Act is concerned, he has taken me through the findings recorded by the Courts below dealing with this ground. He submitted that the Petition requires consideration.

6. I have considered the submissions advanced by Mr. Haridas. I have also perused the material on record. In so far as ground under section 16 (1) (b) of the Act is concerned, the learned trial Judge has dealt with this ground from paragraphs 18 to 23. In paragraph 20, the learned trial Judge dealt with admissions given by the defendants' witness Mohammad Yusuf Khan during the course of cross-examination. In paragraph 21, the learned trial Judge dealt with construction of a shed admeasuring 5'x24' constructed by the iron angles. The learned trial Judge also considered photograph Exhibit 93. After considering the entire evidence on record, in paragraph 22, the learned trial Judge observed that except bare words of the defendants, there is nothing on record to show that the plaintiffs have installed additional windows and erected a shed. In paragraph 23, the learned trial Judge also held that installation of windows and weather shed is permanent construction and that the defendants have not shown that they have obtained prior permission of the plaintiffs.

7. In so far as the District Court is concerned, the said ground is considered in paragraphs 23 to 30. In paragraph 27, the learned District Judge noted that defendants' witness Mohamed Yusuf Khan admitted in his cross-examination about erection of the shed abutting the suit premises after execution of tenancy agreement dated 18th November, 1985 (Exhibit 30). In so far as installation of two windows is concerned, in paragraph 23, the District Judge referred to tenancy agreement at Exhibit 30 as also photograph at Exhibit 92. The learned District Judge observed that during the course of

evidence, defendant No.1 admitted that there were only two windows, one installed in eastern wall and one in western wall. After taking possession from the plaintiffs, two more windows were installed in the western and southern side wall of the suit premises. The learned District Judge disbelieved version of the defendants that two additional windows were already installed in the walls of the suit premises. Thus, after appreciating the evidence on record, the Courts below have concurrently held that the defendants had carried out additions and alterations of permanent nature without obtaining written permission of the plaintiffs.

8. Mr. Haridas relied on explanation to section 16 (1) (b) of the Act. Section 16 (1) (b) and explanation thereto reads thus;

16. When landlord may recover possession._

(1)....

(a)....

(b) that the tenant has, without the landlord's consent given in writing, erect on the premises any permanent structure;

Explanation._ For the purposes of this clause, the expression “permanent structure” does not include the carrying out of any work with the permission wherever necessary, of the municipal authority, for providing a wooden partition, standing cooking platform in kitchen, door, lattice work or opening of a window necessary for ventilation, a fall ceiling, installation of air-conditioner, an exhaust outlet or a smoke-chimney”.

It is not in dispute that in the suit premises two windows were already existing namely one each on the eastern and western walls of the suit premises. This aspect is considered in paragraph 23 by the learned trial Judge and in paragraph 24 by the learned District Judge. In paragraph 24, the learned District Judge observed that admittedly two windows were existing one each in the eastern side wall and western side wall. It means at the time of agreement, there was sufficient ventilation in the suit premises and the

defendants agreed to take it on rent from the plaintiffs. In view thereof, I do not find any merit in the submission of Mr. Haridas based on explanation to section 16 (1) (b) of the Act.

9. In so far as the ground under section 15 of the Act is concerned, the learned trial Judge has considered this ground in paragraphs 13 to 16. In paragraph 13, the learned trial Judge held that the plaintiffs used to issue rent receipts regularly after collecting the rent. The learned trial Judge also noted that the quantum of rent of Rs. 1035/- is not disputed. The learned trial Judge noted that from the cross-examination of defendants' witness Mohamed Yusuf Khan, it is evident that he had lastly paid rent of Rs.2000/- in the year 1997-1998. The demand notice was issued on 21st September, 2000 and the suit was instituted on 31st January, 2001. The suit summons was served on 2nd February, 2001. The defendants appeared on 6th February, 2001. The learned trial Judge observed in paragraph 15 that nothing is placed on record to show that the defendants have deposited rent along with permitted increases and simple interest @ 15% within 90 days from the date of service of summons. The learned trial Judge referred to the order dated 9th February, 2001 passed below Exhibit 10 by which the defendants were directed to deposit arrears of rent of Rs. 44,505/- in the Court within a period of one month and further to pay agreed rent of Rs.1035/- regularly on or before 10th day of each month during pendency of the suit. Nothing was placed on record by the defendants to show that they had challenged that order.

10. In paragraph 16, the learned trial Judge observed that the defendants did not comply the said order and in fact, had deposited Rs.5000/- on 22nd October, 2001. The learned trial Judge, therefore, observed that the defendants violated order dated 9th February, 2001 passed below Exhibit 10 as also did not comply the statutory requirement of section 15 (3) of the Act.

11. In so far as the District Court is concerned, the learned District Judge has considered this ground from paragraphs 19 to 21. In paragraph 21, the learned District Judge referred to the evidence of defendant No.1 Mohamed Yusuf Khan. In the cross-examination, he stated that last rent amount was paid to the plaintiffs in the year 1997-1998 and that amount was Rs. 2000/-. The defendant admitted that he did not comply the order passed below Exhibit 10 as also did not deposit rent regularly on or before 10th day of each month during pendency of the suit. The learned District Judge accordingly upheld the finding recorded by the learned trial Judge on the ground of default in payment of rent. Thus, the Courts below after appreciating the evidence on record decreed the suit also on the ground under section 15 of the Act.

12. The defendants are not in a position to demonstrate that the findings recorded by the Courts below are perverse being based on no evidence or that on the basis of the material on record, no reasonable or prudent person would have come to the conclusion arrived at by the Courts below. Defendants are 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 powers under section 115 of the C.P.C. No case is made out for interfering with the impugned orders. Hence, application fails and the same is dismissed.

13. At this stage, Mr. Haridas orally applies for continuation of ad-interim order granted earlier for a period of 8 weeks from today. In the order dated 5th October, 2016, statements made on behalf of the defendants that;

- (I) they are in possession and nobody else is in possession;

- (ii) they have neither created third party interest nor parted with possession;
 - (iii) they will hereafter neither create third party interest nor part with possession
- were recorded.

14. In view thereof, notwithstanding dismissal of this application, interim order granted earlier shall remain in force for a period of 8 weeks from today subject to the applicants neither creating third party interest nor parting with possession. Order accordingly.

[R.G. KETKAR, J.]