

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 112 OF 2019

Deepak Uttam Tejamal @ Wadhwani
and another

...Applicants

Versus

Smt. Banu Sohrab Irani
and others

...Respondents

WITH
Civil Application No.49 Of 2019
IN
Civil Revision Application No. 112 OF 2019

....
Mr. Prashant D. Patil, Advocate for the Applicants.
Mr. Manoj G. Patil, Advocate for Respondents No.1 & 2.

....

CORAM : R. G. KETKAR, J.

DATE : 17th JUNE, 2019

P.C.

1. Heard Mr. Prashant Patil, learned counsel for the applicants and Mr. Manoj Patil, learned counsel for respondents No.1 & 2, 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 No.2 & 3', have challenged the judgment and decree dated 31.3.2015 passed by the learned Civil Judge, Junior Division, Nashik Road in Regular Civil Suit No. 439/2012. By that order, the learned trial Judge decreed the suit under Sections 15, 16(1)(c), 16(1)

(g) and 16(1)(n) of the Maharashtra Rent Control Act, 1999 (for short, 'Act'). Defendants No.2 & 3 have also challenged the judgment and decree dated 5.9.2018 passed by the learned District Judge-3, Nashik in Regular Civil Appeal No.188/2015. By that order, the learned District Judge dismissed the appeal preferred by defendants No.2 & 3 and upheld the eviction decree under Sections 15 and 16(1)(g) of the Act.

3. In support of this application, Mr. Prashant Patil has strenuously contended that during pendency of the appeal, defendants No.2 & 3 took out application Exhibit-21 under Order XLI Rule 27 of C.P.C. for production of additional evidence i.e. the tax receipt issued by the Devlali Cantonment Board, Nashik (for short, 'Board'). Defendants No.2 & 3 contended that the house tax was paid by them and said payment was to be adjusted towards the rent charged by the plaintiffs. Defendants No.2 & 3 have paid the tax amount of Rs.11,730/- to the Board as against arrears of rent of Rs.11,550/-. Thus, it cannot be said that the defendants were not ready and willing to pay rent and are, therefore, willful defaulter under Section 15 of the Act. He submitted that the learned District Judge, however, rejected the application on the ground that though in the written statement the defendants took this plea, they did not produce the documents to substantiate the said plea in the trial Court and, therefore, no case is made out for production of additional evidence. He submitted that the approach of the learned

District Judge was totally perverse.

4. Mr. Prashant Patil further submitted that the Courts below committed serious error in decreeing the suit under Section 16(1)(g) of the Act. He invited my attention to the evidence of DW-2 Prabhakar Donde, an employee of the Board to substantiate his contention that there are as many as five houses standing in the name of the plaintiffs situate in the market area. Thus all these premises are suitable for residence as also for carrying on business. The Courts below, however, did not properly appreciate the evidence of DW-2 and erroneously decreed the suit under Section 16(1)(g) of the Act. He, therefore, submitted that the application requires consideration.

5. On the other hand, Mr. Manoj Patil supported the impugned orders. He submitted that in paragraph-47, the learned District Judge while rejecting the application under Order XLI Rule 27 of C.P.C. has given reasons. The learned District Judge also relied upon the decision of Apex Court in **Union of India v. Ibrahim Uddin and another, (2012) 8 SCC 148**. He, therefore, submitted that the learned District Judge rightly rejected said application.

6. Insofar as the reliance placed on the evidence of DW-2 Prabhakar Donde is concerned, the learned District Judge has considered this aspect in paragraph-33 and has discarded the evidence

of DW-2. He, therefore, submitted that no case is made out for interfering with the impugned orders.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As mentioned earlier, the learned trial Judge decreed the suit under Sections 15, 16(1)(c), 16(1)(g) and 16(1)(n) of the Act.

8. Insofar as the contention raised by Mr. Prashant Patil based on application under Order XLI Rule 27 of C.P.C. is concerned, in paragraph-47 the learned District Judge noted that in the written statement the defendants have taken specific plea that they have paid taxes to the Board and also urged that said amount should be adjusted towards the rent. Despite raising this plea, tax receipts were not produced in the trial Court.

9. The learned District Judge also noted that defendants No.2 & 3 examined DW-2 Prabhakar Donde. A perusal of his evidence shows that at the behest of defendants No.2 & 3, DW-2 has produced the extracts in respect of five house properties. During the course of cross-examination he admitted that he is not aware as to whether the properties can be used for carrying on business as also can be used for residential purpose. He further admitted that said properties are of joint

ownership. The learned District Judge has considered this evidence in paragraph-33.

10. After considering the material on record, I do not find that the Courts below committed any error in decreeing the suit. The Courts below have concurrently decreed the suit under Sections 15 and 16(1) (g) of the Act. Defendants No.2 & 3 are not in a position to demonstrate that the findings recorded by the Courts below are perverse, being based upon no evidence or that they are contrary to the evidence on record. Defendants No.2 & 3 are also not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the Courts below. 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. No case is made out for invocation of powers under Section 115 of C.P.C. Hence, Civil Revision Application fails and the same is dismissed with no order as to costs. In view of dismissal of Civil Revision Application, Civil Application No.49/2019 for stay of the impugned orders does not survive and same is also disposed of. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)