

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL REVISION APPLICATION NO.154 OF 2019

Mandakini Shantaram Vedpathak	]	Applicant
Vs.		
Prakash Dattatreya Jahveri	]	Respondent

.....
Mr. Sandesh Patil i/b Ms. Anusha P. Amin, Advocate for the Applicant.
.....

CORAM : R.G. KETKAR, J.

DATE : 27th JUNE, 2019.

P.C:

Heard Mr. Patil, learned Counsel for the applicant, 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 30th November, 2010 passed by the learned 8th Joint Civil Judge (Junior Division), Thane in Regular Civil Suit No.597 of 2000 as also the judgment and decree dated 4th August, 2018 passed by Ad-hoc District Judge-6, Thane in Regular Civil Appeal No.46 of 2013. By these orders, the Courts below decreed the suit instituted by the respondent, hereinafter referred to as 'plaintiff' and directed the defendant to hand over vacant and peaceful possession of one Room admeasuring 8'x6' square feet in Javheri Chawl situate at Khemchand Rajkumar (K.R. Steel Co.) Old Belapur Road, Near Railway Gate, Kalwa, Thane (for short 'suit premises').

3. In support of this application, Mr. Patil strenuously contended that in paragraph 1 of the judgment of the trial Court, the learned trial Judge has referred to filing of the suit under section 12 and 13 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Bombay Rent Act'). The suit is instituted on 18th August, 2000. He, therefore, submitted that the suit was instituted under the Maharashtra Rent Control Act, 1999 (for short 'Maharashtra Rent Act'). The learned trial Judge, however, proceeded on the ground that the suit is instituted under the Bombay Rent Act. This clearly shows non application of mind. The learned trial Judge was, therefore, not justified in decreeing the suit. He invited my attention to paragraphs 11 and 12 of the District Court's judgment wherein the learned District Judge has dealt with this contention.

4. Mr. Patil further submitted that the defendant was not given opportunity to cross-examine the plaintiff's witness and adduce evidence. Hence, the matter may be remitted to the trial Court for giving opportunity to the defendant.

5. I have considered the submissions advanced by Mr. Patil. I have also perused the material on record. As mentioned earlier, the plaintiff has instituted suit on 18th August, 2000 invoking grounds of arrears of rent and bona fide requirement. In paragraph 1, the learned trial Judge undoubtedly has referred to the grounds invoked by the plaintiff under section 12 and 13 of the Bombay Rent Act and proceeded to decide the suit.

6. The said contentions was specifically urged before the District Court. The learned District Judge has considered this contention in paragraph 11. For the reasons recorded in paragraph 12, I do not find that the learned District Judge has committed any error. The learned District Judge has rightly

held that though in paragraph 1, the learned trial Judge has referred to sections 12 and 13 of the Bombay Rent Act, it cannot be said that the judgment and decree is wrong and illegal because grounds of eviction mentioned under section 12 and 13 of the Bombay Rent Act are identical under section 15 and 16 of the Maharashtra Rent Act.

7. In so far as contention that the plaintiff has not established these grounds is concerned, the Courts below have noted that the defendant did not cross-examine the plaintiff's witness. The defendant also did not adduce evidence. In paragraph 10, the learned District Judge noted that initially the defendant failed to file her written statement. The suit proceeded 'without written statement' against the defendant. 'No written statement' order was set aside. The defendant thereafter filed her written statement dated 1st November, 2002 at Exhibit 16. The learned trial Judge framed the necessary issues on 20th February, 2004 below Exhibit 17. The defendant thereafter remained absent. Thus, though the opportunity was given to the defendant, she failed to avail the opportunity. That apart, the defendant also did not adduce evidence and cross-examine the plaintiff's witness. In view thereof, it cannot be said that the plaintiff did not substantiate eviction grounds under section 15 and 16 (1) (g) of the Maharashtra Rent Act. It is, therefore, not possible to accept submission of Mr. Patil that the impugned orders be set aside thereby giving opportunity to the defendant. The defendant cannot complain about breach of principle of natural justice when the defendant did not avail opportunity to lead evidence and also cross-examine the plaintiff's witness. Hence, no case is made out for interfering with the impugned orders.

8. In the light of the aforesaid discussion, it cannot be said that the findings recorded by the Courts below while decreeing the suit under Section 15 and 16 (1) (g) of the Maharashtra Rent Act are contrary to the material on

record. The defendant is 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. The 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.

[R.G. KETKAR, J.]