

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 636 OF 2018

Smt. Ved Khanna Wd/o. Prakashchand Khanna,
(Since deceased), through L.R.

1A. Poonam Prakashchand Khanna (before marriage)

Poonam Shailesh Jayakar (after marriage)

...Applicant

Versus

Smt. Vasanti Wd/o Yeshwant Kajrolkar

And others

...Respondents

....

Mr. J.S. Saluja i/b. Saveena Bedi, Advocate for the Applicant.

Mr. R.A. Thorat, Senior Advocate a/w. Kunal Bhanage, Advocate for Respondents No.1 to 3.

....

CORAM : R. G. KETKAR, J.

DATE : 11th FEBRUARY, 2019

P.C.

1. Heard Mr.J.S. Saluja, learned counsel for the applicant and Mr.R.A. Thorat, learned Senior Counsel for respondents No.1 to 3, 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 the 'defendant', has challenged the judgment and decree dated 8.11.2014 passed by the learned Judge, Court Room No.38 of the Small Causes Court at Mumbai (Bandra Branch) in R.A.E. & R. Suit No.261/736 of 1998 as also the judgment and decree dated 7.9.2018 passed by the Appellate Bench of the Small Causes Court at Mumbai (Bandra) in 2(a)

Appeal No.27/2015.

3. By these orders, the Courts below decreed the suit instituted by the respondents, hereinafter referred to as the 'plaintiffs' and directed the defendant to vacate and hand over peaceful possession of Flat No.2, 1st floor, Sham Bhuvan, Anand Vihar Co-operative Housing Society Ltd., Plot No.7-A, 20th Road, Khar (West), Mumbai (for short,'suit premises') to the plaintiffs. The defendant was further restricted from using the suit premises for playing cards/gambling purpose till handing over possession of the suit premises to the plaintiffs.

4. The plaintiffs had instituted suit invoking the grounds under Sections 12, 13(1)(b), 13(1)(c), 13(1)(e), 13(1)(k), 13(1)(a) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, 'Act') read with Section 108(o) of Transfer of Property Act, 1872 (for short, 'T.P. Act'). The learned trial Judge held that the plaintiffs proved that the defendant has been guilty of causing nuisance or annoyance to the adjoining or neighbouring occupiers [Section 13(1)(c)]; the plaintiffs further proved that the defendant has without the consent of the plaintiffs in writing erected a permanent structure in the suit premises [Section 13(1)(b)]; the plaintiffs proved that the defendant has caused waste and damage to the suit property [Section 13(1)(a) read with Section 108 of T.P. Act]; the plaintiffs proved that the defendant has changed the user of the

suit premises [Section 13(1)(k)]; the plaintiff proved that the defendant has unlawfully sub-let the part of the suit premises to third party [Section 13(1)(e)]; and that the plaintiffs proved that the defendant has failed and neglected to pay the arrears of rent [Section 12]. Aggrieved by this decision, the defendant preferred appeal. By order dated 7.9.2018, the Appellate Court affirmed the decree only on the ground of arrears of rent (Section 12) and declined to pass decree under other grounds. It is against these orders, the defendant has instituted present Civil Revision Application.

5. In support of this application, Mr. Saluja raised following contentions:

(i) The defendant was and is always ready and willing to pay the rent. In fact on several occasions, the defendant had paid the rent in cash to the plaintiff. Though the plaintiff accepted the rent in cash, he did not issue rent receipts. Thus, the defendant was and is always ready and willing to pay the rent.

(ii) The defendant's Advocate was negligent in conducting the trial. He partly cross-examined the plaintiffs' witness PW-1. He did not advise the defendant in adducing evidence. With the result, the trial Court decided the suit in the absence of evidence of the defendant. The defendant should not suffer because of the negligence on the part of her Advocate.

6. Mr. Saluja submitted that though the Courts below observed that several opportunities were given to the defendant for adducing evidence, the opportunities were not availed. This is not borne out from the record of the case.

7. Mr. Saluja also invited my attention to the amendment made in C.R.A. in pursuance of the order dated 4.2.2019 and in particular paragraphs-(v)(i) to (v)(ix). He submitted that the impugned orders may be set aside and opportunity of leading evidence may be given to the defendant. He submitted that highhandedly the defendant was dispossessed from the suit premises on 11.3.2015 and her valuable articles are lying in the suit premises.

8. On the other hand, Mr. Thorat supported the impugned orders. He submitted that the demand notice dated 25.2.1998 was issued to the defendant. On 16.3.1998, the defendant gave reply. On 2.4.1998, the plaintiff gave rejoinder. On 9.7.1998, the plaintiff instituted suit invoking various grounds. On 27.11.2001, the defendant filed written statement. The issues were framed on 7.4.2003. He submitted that the defendant did not comply Section 12(3) of the Act by depositing the amount along with 9% simple interest. The defendant also was not regularly depositing the rent till the decision of the trial Court. On 8.9.2003, the defendant took out Notice No.1778/2003 *inter alia* praying for permission to deposit the rent

from June, 1998 till September, 2003. He submitted that the contention that the opportunity should be given to the defendant by remanding the case to the trial Court was considered by the Appellate Court. The Appellate Court also considered the plea of the defendant that there was negligence on the part of her Advocate and turned down the said submissions. He submitted that after appreciating the evidence on record, the Courts below have concurrently decreed the suit under Section 12 of the Act. He submitted that apart from that, the plaintiff has also executed the decree on 11.3.2015. However, the defendant has not removed her belongings lying in the suit premises. He submitted that the plaintiff has no objection for permitting the applicant to retrieve the belongings lying in the suit premises.

9. 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 plaintiff had instituted the suit by invoking various grounds. The trial Court decreed the suit under Sections 12, 13(1)(b), 13(1)(c), 13(1)(e), 13(1)(k), 13(1)(a) read with Section 108 of T.P. Act. As against this, the Appellate Court upheld the findings only in respect of ground of arrears of rent as contemplated by Section 12 of the Act. No arguments were advanced on behalf of the plaintiff in support of other grounds of eviction which were turned down by the

Appellate Court. Thus, the controversy between the parties lies only in respect of the ground of arrears of rent.

10. The parties executed agreement dated 31.5.1995. The agreed rent was Rs.700/- per month and Rs.70/- towards society charges. It is not in dispute that the plaintiff had issued demand notice dated 25.2.1998 which was duly served on the defendant. The defendant gave reply on 16.3.1998. The suit was instituted on 9.7.1998. The defendant filed written statement on 27.11.2001. The issues were framed on 7.4.2003.

Section 12(3) of the Act reads thus :

“12. No ejectment ordinarily to be made if tenant pays or is ready and willing to pay standard rent and permitted increases.--

(1) xxxxx

(2) xxxxx

(3) No decree for eviction shall be passed by the Court in any suit for recovery of possession on the ground of arrears of standard rent and permitted increases if, on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenant pays or tenders in Court the standard rent and permitted increases then due and together with simple interest on the amount of arrears of such standard rent and permitted increases at the rate of nine per cent, per annum; and thereafter continues to pay or tenders in Court regularly such standard rent and permitted increases till the suit is finally decided and also pays cost of the suit as directed by the Court.

Provided that, the relief provided under this sub-section shall not be available to a tenant to whom relief against forfeiture was given in any two suits previously instituted by the landlord against such tenant.”

11. The defendant took out Notice No.1778/2003 on 8.9.2003. By order dated 8.9.2004, the trial Court disposed of said Notice. The defendant was permitted to deposit the amount of Rs.65,700/- together with interest @ 9% per annum towards the arrears from 1997 to 2000. Insofar as the arrears of rent is concerned, the same is covered by issues No.5, 6 and 8. The learned trial Judge dealt with these issues in paragraph-8. The learned trial Judge noted that the evidence of the plaintiffs remained unchallenged. Though on behalf of the defendant, cross-examination was conducted, nothing came out so as to disbelieve the evidence of the plaintiffs. The learned trial Judge held that the plaintiffs proved that the defendant failed and neglected to pay the arrears of rent in spite of the demand notice and failed to comply with the same.

12. Insofar as the Appellate Court is concerned, in paragraph-14, the Appellate Court noted that the plaintiffs examined PW-1. He was partly cross-examined and thereafter the cross-examination of the plaintiffs was closed. The defendant did not step into the witness box. After hearing the Advocate for the plaintiffs, the trial Court decreed the suit.

13. In paragraph-26, the Appellate Court dealt with the contention of the defendant that her Advocate was negligent in conducting the trial and the matter may be remitted to the trial Court for giving opportunity to adduce evidence. The Appellate Court observed that the cross-examination

of PW-1 was partly made and further cross-examination was not conducted. The right to further cross-examination was not availed. Though the further cross-examination was not made, nothing prevented the defendant to enter into the witness box.

14. In paragraph-32, the Appellate Court dealt with the submission of the defendant that she used to pay rent by cash to the plaintiffs but the plaintiffs did not issue rent receipt to her. The Appellate Court observed that the defendant did not come into the witness box. She did not examine any witness. On the contrary, during pendency of the suit the defendant had submitted Notice No.1778/2003 seeking permission to deposit rent from June, 1997 till September, 2003. Accordingly permission was given.

15. In paragraphs-33 and 34, the Appellate Court observed that the defendant admitted that she was in arrears of rent from the date of demand notice along with society charges. Thus, coupled with the admission of the defendant in paragraph-5 of the written statement as also evidence on record, the Appellate Court affirmed the finding of the trial Court on the question of arrears of rent.

16. In paragraph-37, the Appellate Court concluded that the defendant was in arrears of rent and society charges and the defendant ought to have paid the rent on or before the first date of hearing and should have continued to pay the rent till disposal of the suit. The Appellate

Court, therefore, confirmed the decree under Section 12 of the Act. As mentioned earlier, even the plaintiffs has executed the decree on 11.3.2015.

17. In the light of the above discussion, I do not find that the Courts below committed any error in decreeing the suit under Section 12 of the Act. The defendant is 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. The defendant is 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. Hence, Civil Revision Application fails and the same is dismissed with no order as to costs.

18. The defendant is permitted to retrieve her belongings presently lying in the suit premises. Let that exercise be done within a period of two weeks from today. Subject to this, Civil Revision Application fails and the same is dismissed.

19. All concerned parties to act upon the authenticated copy of this order. Order accordingly.

(R. G. KETKAR, J.)