

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

CIVIL REVISION APPLICATION [STAMP] NO.37184 OF 2018

Balraj Yashwant Vedpathak	]	
(since deceased through legal	]	
representatives)	]	
Sangeeta Balraj Vedpathak and others.	]	Applicants
Vs.		
Vaishali Vijay Paranjape and others.	]	Respondents

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Mr. S.B. Shetye i/b Manish Bohra, learned Counsel for the Applicants.

Mr. Sagar G. Talekar, learned Counsel for the Respondents.

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CORAM : R.G. KETKAR, J.

DATE : 29TH MARCH, 2019 &

3rd APRIL, 2019.

P.C.

Heard Mr. Shetye, learned Counsel for the applicants and Mr. Talekar, learned Counsel for the respondents at length.

2. By this Application under section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C'), the applicants have challenged the judgment and decree dated 16th October, 2009 passed by the Joint Civil Judge, Junior Division, Roha Camp at Pali in Regular Civil Suit No.38 of 2000 as also the judgment and decree dated 9th October, 2018 passed by the learned Extra Joint District Judge, Mangaon-Raigad in Regular Civil Appeal No.54 of 2009. By the impugned orders, the Courts below decreed the suit instituted by the respondents, hereinafter referred to as 'plaintiffs' and directed the applicants, hereinafter referred to as 'defendants' to hand over vacant and peaceful possession of Municipal House No.1590 (1058) admeasuring 454 square feet situate at Roha (for short 'suit premises') to the plaintiffs within three months from the date of the order.

3. The plaintiffs instituted suit against Balraj Yashwant Vedpathak, predecessor in title of the defendants (for short 'original defendant') for recovery of possession of the suit premises, *inter alia*, invoking grounds under section 16 (1) (a) and 16 (1) (n) of the Maharashtra Rent Control Act, 1999 (for short 'Act'). They contended that the suit premises have not been used without reasonable cause for the purpose for which they were let out for a continuous period of six months immediately preceding the date of the suit. The plaintiffs came with the case that the suit premises was exclusively let out for residential purpose. The original defendant changed user from residential to commercial. The original defendant was the painter and had started business of sign board painting, number plate and other painting works from the suit premises. The original defendant also started business of STD booth and photo copying machines from the suit premises. Thus, though the suit premises was let out exclusively for residential user, the original defendant changed user from residential to commercial.

4. The plaintiffs further contended that the original defendant has not used the suit premises without reasonable cause for the purpose for which they were let out for a continuous period of six months immediately preceding the date of the suit.

5. In addition to these grounds, the plaintiffs also claimed possession on the ground of reasonable and bona fide requirement as also additions and alterations of permanent nature without written permission of the plaintiffs. The plaintiffs, therefore, filed suit invoking grounds under sections 16 (1) (a), 16 (1) (g) and 16 (1) (n) of the Act for recovery of possession of the suit premises.

6. The original defendant filed his written statement dated 9th January, 2002. The original defendant denied that the suit premises were exclusively let out for residential purpose. The original defendant contended that the suit premises were let out for composite purpose i.e for residential as also for commercial purpose. The original defendant was using northern portion for residential purpose and southern portion for commercial purpose. As the suit premises were let out for composite purpose, the original defendant denied that he has changed user of the suit premises. The original defendant further denied the ground of non user as also ground of reasonable and bona fide requirement pleaded by the plaintiffs and that he has carried out additions and alterations of permanent nature without written permission of the plaintiffs.

7. On the basis of the pleadings of the parties, the learned trial Judge framed the necessary issues. The parties adduced evidence. After appreciating the evidence on record, the learned trial Judge decreed the suit on two grounds namely; 16 (1) (a) and 16 (1) (n) of the Act. Aggrieved by this decision, legal representatives of original defendant, who are present applicants (for short 'defendants') preferred appeal. By order dated 9th October, 2018, the learned District Judge dismissed the appeal. It is against these orders, the defendants have instituted the present Application.

8. In support of this application, Mr. Shetye strenuously contended that the Courts below committed serious error in holding that the suit premises were let out exclusively for residential purpose. He submitted that basically burden is on the plaintiffs to establish that the suit premises were let out exclusively for residential purpose. He submitted that the Courts below committed error in holding that the suit premises were let out for residential purpose only on the basis of the rent receipts. The Courts below failed to

appreciate that the electricity bills show that the suit premises are used for commercial purpose. The Courts below also failed to appreciate the evidence of Chief Officer D.W.5, Rajesh Kanade at Exhibit 116. D.W.5 Rajesh Kanade had deposed on the basis of the record available with the Municipal Council and he cannot be expected to have personal knowledge. The record produced by D.W.5 clearly establishes that the suit premises are commercial premises. He further submitted that it has come on record that the locality where the suit premises is situate is commercial locality surrounded by Shops. It is, therefore, inconceivable that solitary premises namely the suit premises are used exclusively for residential purpose. Mr. Shetye has taken me through the ground of change of user from paragraphs 15 onwards of the trial Court's judgment.

9. Mr. Shetye further submitted that the Courts below decreed the suit under section 16 (1) (n) only because it was held that the plaintiffs established change of user from residential to commercial and, therefore, it also amounts to non user as contemplated by section 16 (1) (n) of the Act.

10. Mr. Shetye has invited my attention to point No.4 framed by the learned District Judge which is to the following effect;

“Do the defendants prove that the suit premises were let out to them for composite purpose?”

He submitted that in fact, the learned District Judge should have framed following point;

“Whether the plaintiffs prove that the suit premises were let out exclusively for residential purpose?”

The burden to prove the above point is on the plaintiffs.

11. Mr. Shetye invited my attention to paragraph 13 of the District Court's judgment. The learned District Judge observed that written statement is totally silent in respect of original defendant running business in the name and style as 'Balraj Arts'. He submitted that in paragraph 11 (A) of the written statement, the original defendant specifically contended various commercial activities he is carrying on from the Southern Side of the suit premises such as sign board painting, number plate and other painting works from the suit premises. Original defendant was also carrying on business of STD booth and photo copying machines from the suit premises. Northern portion is used for residential purpose. Merely because in the written statement, the original defendant did not plead that he is running business in the name and style of "Balraj Arts", that will not demolish the case of the defendants that suit premises were let out for composite purpose. For all these reasons, he submitted that the application requires consideration.

12. On the other hand, Mr. Talekar supported the impugned orders. He submitted that the rent receipts produced at Exhibit 56 to 61 clearly show that the suit premises were let out exclusively for residential purpose. He submitted that original defendant admitted in the cross-examination that he did not object mentioning of residential purpose in the rent receipts. The original defendant also did not request the plaintiffs to record user of commercial purpose in the rent receipts.

13. Mr. Talekar submitted that since 1970, the suit premises were exclusively let out for residential purpose. In the year 1997-1998, the original defendant started business of STD Booth from the suit premises. As the suit premises were given for residential purpose and the original defendant started using it for commercial purpose, the Courts below were justified in holding that there is change of user. The learned trial Judge considered decision of this

Court in **Shantilal Kesharmal Gandhi Vs. Prabhakar Balkrishna Mahanubhav, 2005 (4) Mh. L. J 507**, wherein it is held that where the premises is let out only for residential purpose and tenant started using it for business purpose of making hardboard boxes, the tenant breached the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 and, therefore, his eviction becomes legal for change of user and non-occupation continuously for more than six months. He, therefore, submitted that no case is made out for interfering with the impugned orders.

14. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. As mentioned earlier, the plaintiffs have instituted suit under section 16 (1) (a), 16 (1) (b), 16 (1) (g) and 16 (1) (n) of the Act. The Courts below have decreed the suit only under section 16 (1) (a) and 16 (1) (n) of the Act. The learned Counsel did not advance any argument on the grounds under section 16 (1) (b) and 16 (1) (g). The controversy in the present C.R.A is restricted only as regards grounds under section 16 (1) (a) and 16 (1) (n) of the Act.

15. In so far as ground of change of user is concerned, the learned trial Judge has considered this aspect from paragraphs 15 to 32. In paragraph 23, the learned trial judge referred to assessment tax receipts which were produced on record at Exhibit 62, 87 and 117. The learned trial Judge also referred to evidence of D.W.5 Rajesh Kanade. In paragraph 24, the learned trial Judge considered evidence of original defendant Balraj Vedpathak, D.W.1. In paragraph 27, the learned trial Judge referred to electricity bills produced at Exhibit 63 to Exhibit 70 which indicate that commercial electricity meter is installed in the suit premises. The learned trial Judge referred to the cross-examination of P.W.1 Vaishali Paranjape. It has come on record that her father-in-law who was a practising lawyer had applied for commercial

electricity meter for his own office use and later, from the same meter electricity was provided to all the tenants. The learned trial Judge also observed that the plaintiffs did not apply for residential meter. In paragraph 28, the learned trial Judge observed that it is not the case of the original defendant that he applied for commercial type electricity meter and accordingly it was installed. In paragraph 31, the learned trial referred to rent receipts where the terminology used is “rent towards residential premises”. The learned trial Judge further observed that the original defendant never asked to issue rent receipt towards commercial premises and accordingly, got the rent receipts corrected in that manner. Rent receipt is a vital incident of tenancy and any evidence coming through such rent receipts cannot be casually overlooked or ignored. The learned trial Judge noted in paragraph 32 that the original defendant is carrying on business of painting as also started STD booth, photo copying machine etc from the suit premises. After considering the material on record, the learned trial Judge held that the original defendant has changed the user of the suit premises from residential to commercial purpose.

16. In so far as the ground of non user is concerned, the learned trial Judge has considered this aspect from paragraph 33 to paragraph 38. In paragraph 37, the learned trial Judge referred to the decision of **Shantilal Kesharmal Gandhi** (supra), wherein it is held that where the premises is let out only for residential purpose and tenant started using it for business purpose of making hardboard boxes, the tenant breached the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 and, therefore, his eviction becomes legal for change of user and non-occupation continuously for more than six months.

17. In so far as the judgment of the District Court is concerned, in paragraph 13, the learned District Judge referred to the rent receipts filed at Exhibit 56 to 61 in respect of the suit premises and observed that these rent receipts show that they are pertaining to residential purpose. The defendant admitted in his cross-examination that he did not object to the said fact and did not request the plaintiffs that the suit premises is let out to him for composite purpose. In paragraph 20, the learned District Judge referred to the electricity meter for commercial purpose and observed that deceased Vijay Paranjape was an Advocate and he had taken connection of electricity for commercial purposes and used the same for his office purpose. As such, the commercial meter was installed. In paragraph 22, the learned District Judge observed that the original defendant had purchased Flat No.104 at Arihant Complex in the name his son. He shifted to that premises along with his family. The said evidence of the plaintiffs was not challenged by the defendants. In fact, the original defendant admitted in his cross-examination that summons of the suit premises was served on the address of Arihant Complex. The learned District Judge, therefore, held that the defendant was nor residing in the suit premises after acquiring the premises in Arihant Complex. Thus, after re-appreciating the entire evidence on record, the learned District Judge has upheld the trial Court's judgment.

18. In view thereof, I do not find that the Courts below committed any error in passing the impugned orders. It cannot be said that the findings recorded by the Courts below are contrary to the material on record. 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. The 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 the powers under section 115 of C.P.C. In the result, the Civil Revision Application fails and the same is dismissed.

19. At this stage, Mr. Shetye orally applies for stay of eviction decree for a period of 12 weeks from today. He assures that within two weeks from today the applicants and all the adult family members using the suit premises will file usual undertaking in this Court after giving advance copy to the other side incorporating therein that:

- [a] they are in possession and nobody else is in possession of the suit premises;
- [b] they have neither created third party interest nor parted with possession of the suit premises;
- [c] they will hereafter neither create third party interest nor part with possession of the suit premises;
- [d] within two weeks from today, the applicants will deposit the arrears of rent, if any, in this Court, under due intimation in writing to the learned Counsel for the respondents.
- [e] in case the applicants are unable to obtain suitable orders from the higher Court within 12 weeks from today, they will hand over vacant and peaceful possession of the suit premises to the respondents/plaintiffs.

20. In view thereof, notwithstanding dismissal of the Civil Revision Application, subject to the applicants filing undertaking in the aforesaid terms within two weeks from today, eviction decree is stayed for a period of 12 weeks from today. It is expressly made clear that in case the undertaking is

not filed in the aforesaid terms within two weeks from today and/or in case applicants commit breach of any of the conditions of the undertaking, the stay to the eviction decree will stand vacated without further reference of the Court. Order accordingly.

[R.G. KETKAR, J.]

DATE: 3RD APRIL, 2019.

After the order was dictated in the open Court on 29th March, 2019, Mr. Bohra moved again this Court on 3rd April, 2019 stating that if the applicants are given one year's time to vacate and hand over possession of the suit premises to the respondent, the applicants are not pressing this C.R.A. He assures that within two weeks from today, the applicants and all adult family members residing/using the suit premises will file usual undertaking with advance copy to the other side incorporating therein that;

- [a] they are in possession and nobody else is in possession of the suit premises;
- [b] they have neither created third party interest nor parted with possession of the suit premises;
- [c] they will hereafter neither create third party interest nor part with possession of the suit premises;
- [d] within two weeks from today, the applicants will deposit the arrears of rent, if any, in this Court, under due intimation in writing to the learned Counsel for the respondents.
- [e] they will hand over vacant and peaceful possession of the suit premises to the respondents on 30th April, 2020.

In view thereof, list the application for reporting compliance on 24th April, 2019.

[R.G. KETKAR, J.]