

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1423 OF 2019

Samir Ramzanali Rayani

..Petitioner

Vs.

Shahzada Abbas Bhaisaheb

Fakhruddin & Ors.

...Respondents

Mr. Shriram Sadanand Redij, for the Petitioner.

Mr. Khan Javed Akhtar, for the Respondent Nos.1 to 16.

Mr. Kantilal Hiralal Kanojia, for the Respondent No.17.

CORAM : C.V. BHADANG, J.

DATE : 12th FEBRUARY 2021

P.C.

. The challenge in this petition is to the order dated 2/8/2018 (below Exh.33) passed by the learned Small Causes Court at Mumbai in R.A.E. Suit No.635/2015. By the impugned order, application (Exh.33) filed by the petitioner (original defendant No.2) under Order VII Rule 11 of CPC, for rejection of the plaint on the ground that it does not disclose cause of action, has been rejected.

2. The brief facts necessary for the disposal of the petition may be status thus.

The aforesaid suit is filed by the respondent Nos.1 to 16 against the petitioner (defendant No.2) and one Hamida Rayani (defendant No.1) for eviction and possession from the suit premises, more specifically described in the plaint. The eviction is sought on the ground of reasonable and bonafide requirement under Section 16(1)(g) of the Maharashtra Rent Control Act, 1999 ('the Act', for short).

3. The plaint sets out the aims and object of the plaintiff Trust namely Saifee Burhani Upliftment Trust (SBUT) which includes upliftment and wellbeing of the people residing under the umbrella of 'Raudat Tahera', in Bhendi Bazar, by providing them more spacious ownership flats with modern amenities, in a better environment. For the said object and purpose, the Trust can undertake building construction, development, design of building condominiums, apartments, homes etc. For the limited purpose of deciding the present petition, it is not necessary to set out the objects in details. Suffice it to mention that as per the case made out in the plaint, one of the pilot schemes to be implemented by the plaintiff Trust involved rehabilitation of approximately 25000 residents in about 250 buildings in Bhendi Bazar at Mumbai. It was contended that the said buildings which are around 100 years old

are beyond repairs and in a dilapidated and uninhabitable condition. The material case is that in order effect the said development in Bhendi Bazar, the suit premises, which are situated in Anjirwadi, Mazgaon were required for transit accommodation. This according to the plaintiff Trust is a reasonable and bonafide requirement of the plaintiff Trust which is the landlord.

4. The suit has been resisted on behalf of the respondent on several grounds. It is inter alia contended that the suit as framed and filed is not maintainable, as it does not disclose cause of action. It is contended that the plaintiffs have not exfacie shown that there is any reasonable and bonafide requirement of the premises within the meaning of Section 16(1)(g) of the said Act.

5. On the basis of the rival pleadings, the learned Trial Court has framed as many as eight issues out of which Issue No.5 is Whether the suit is bad for want of cause of action ? It transpired during the course of hearing that the suit is at the stage of evidence. Be that as it may, the petitioner, (defendant No.2) filed an application for rejection of plaint on the ground that it does not disclose cause of action, which application has been rejected by the learned Trial Court.

6. I have heard Mr. Redij, the learned counsel for the petitioner, Mr. Khan, the learned counsel for the respondent Nos.1 to 16 and Mr. Kanojia, the learned counsel for the respondent No.17. Perused record.

7. The learned counsel for the petitioner strenuously urged that the plain reading of the plaint does make it explicit that there is no cause of action for seeking eviction under Section 16(1)(g) of the Act. In the submission of the learned counsel, the object of the Trust is essentially redevelopment after demolition of the existing buildings which would fall under Section 16(1)(i) of the said Act. In the submission of the learned counsel for the petitioner, the landlord seeking eviction under Section 16(1)(i) of the said Act, is under an obligation to provide alternate accommodation, which is not forthcoming. The learned counsel submitted that on a meaningful reading of the plaint, the essential purpose, object, and the ground eviction is relatable to Section 16(1)(i) and not Section 16(1)(g) of the said Act. It is submitted that the learned Trial Court is in error in refusing to reject the plaint.

8. The learned counsel for the respondent No.17 has supported the petitioner on similar grounds.

9. The learned counsel for the contesting respondent Nos.1 to 16 (original plaintiffs) has supported the impugned order. It is submitted that there is no redevelopment contemplated of the building at Anjirwadi at Mazgaon where the suit premises are situated. Thus, the ground for eviction would not fall under Section 16(1)(i) of the Act, as claimed. It is submitted that the ground of eviction is essentially under Section 16(1)(g) of the said Act. He therefore submitted that the petition be dismissed.

10. I have considered the rival circumstances and the submissions made. It is now well settled that while considering the prayer for rejection of plaint, the Court has to confine to the averments in the plaint and the documents filed alongwith it. The Court cannot look into the defence, actual or probable while considering such question. It is further well settled that the Court has to read the plaint meaningfully as a whole in order to decide whether a case of rejection under Order VII Rule 11 of the CPC is made out or not.

11. In the present case, the rejection is sought on the ground that the plaint does not disclose cause of action. The facts set out above would clearly show that the plaintiff Trust intends to redevelop the property / buildings at Bhendi Bazar. The suit premises are situated

in a building at Anjirwadi at Mazgaon which according to the plaintiffs are within the radius of 3 K.Ms. from the Bhendi Bazar locality. The said land and premises at Anjirwadi, Mazgaon are referred to as a 'transit land'. In short, according to the plaintiffs, the eviction of the petitioner from the suit premises is sought as the premises at Anjirwadi Mazgaon where the suit premises are situated, are required for providing transit accommodation. The plaint does not show anywhere, that there is any redevelopment of the property at Anjirwadi Mazgaon planned or envisaged. Thus, at least, prima facie, it cannot be accepted that the claim is relatable to Section 16(1)(i) of the Act as claimed on behalf of the petitioner. It is necessary to note that the petitioners have delivered a comprehensive defence in the suit on the basis of which the Trial Court has framed issues. One of the issue i.e. Issue No.5 is Whether suit is bad for want of cause of action which is based on the defence that the suit does not disclose cause of action. It is trite that cause of action is a bundle of facts on which the claim is based, which if proved entitles the plaintiff to the reliefs claimed. If certain facts which are part of the defence are established by the defendant, the plaintiff would fail. Looked from any angle, essentially the question whether the plaint discloses cause of action in the present case is one, which would be required to be gone into at the trial of the suit.

In my considered view, on a meaningful reading of the plaint as a whole it is not possible to hold that it does not disclose any cause of action as contended on behalf of the petitioner, so as to entail its rejection.

12. In the result, the petition is dismissed, with no order as to costs.

It is made clear that the observations herein are essentially limited for the purpose of deciding the issue of rejection of plaint and the Trial Court shall not be influenced by the same at the trial. The Trial Court shall dispose of the suit, as expeditiously as possible. The parties to co-operate for early disposal of the suit.

C.V. BHADANG, J.