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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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CIVIL REVISION APPLICATION NO.268 OF 2023

Bipinbhai A. Doshi , since deceased
through His L.Rs. - Pravin B. Doshi & Ors.

...Applicants
Ori.Appellants
& Ori.Deft Nos.
3 and 4

V/s.

Reena D. Padrakar, since deceased
through Her L.Rs. - Pravan D. Padrakar & Ors.

...Respondents
Ori.Plff Nos.1 to 3

Mr.Surel S. Shah with Mr.Kiran Jain, Adv.Ish Jain, Adv.D. Jain and
Mr.Rajan Jain i/b Kiran Jain & Co. for the Applicants.

Mr.Nirman Sharma with Adv.Jigar Parmar i/b Mr..J.V. Parmar
Sharma for Respondent Nos.1 and 2.

CORAM : RAJESH S. PATIL, J.
DATE : 4TH OCTOBER, 2023.

P.C. :-

1. This Civil Revision Application is filed under Section 115 of the Code of Civil Procedure, 1908 challenges the concurrent findings of Judgment and Decree of possession passed by a single Judge of the Court of Small Causes, Mumbai and as confirmed by the Judgment and Decree passed by the Division Bench of the Small Causes Court in Appeal.

FACTS:

2. The Plaintiffs are the owners of flat No. 15 in the building known as “Devprakash Co-operative Housing Society Limited”, 3rd floor, Chowpatty Sea Face, Mumbai – 400 007. The said flat is having single share certificate. However, the flat was divided into two parts, numbering it as flat No.15 and 15-A. The present proceedings are regarding flat No.15-A, which is admeasuring 545 sq. ft. as carpet area and the monthly rent of the said premises at the time of filing of the suit is Rs.406.72 ps. The said flat is situated in a posh locality of Mumbai City, known as Girgaon Chowpatty.

3. Plaintiffs No.1 and 2 are widow and son of one Devang Padrakar and Plaintiff No.3 is the brother of Devang Padrakar. Suit was filed by Plaintiffs / Landlords for eviction on the ground of Bonafide Requirement, under Section 16(1)(g) of the Maharashtra Rent Control Act, for eviction against the Defendants. The need as pressed in the said suit was stated in paragraph Nos.9 to 12. It is specifically stated in the plaint that Plaintiff No.1 and 2, and the family of Plaintiff No.3 are jointly staying together in the same building on the 5th floor. It is further averred in the plaint that there are two separate kitchens maintained in the 5th floor flat. It is further stated that the relationship of the family members of Plaintiff No.3 at one hand and Plaintiff No.1 and 2 at another hand are not cordial. There

are quarrels going on between the two families. Therefore, the entire family decided that the family of Plaintiff Nos.1 and 2, after the death of the husband of Plaintiff No.1 will stay in the said premises consisting of flat No.15-A and flat No.15. Another suit for eviction was also filed for flat No.15.

4. The Defendants have filed their written statement and have denied the contentions of the Plaintiffs. Defendant No.1 has died during the pendency of the suit and Defendant No.2 is admittedly staying at a separate premises in central part of the city of Mumbai i.e. at Sion. Defendant No.3 has also died. Defendant No.3 has only one daughter, who is also married and is staying with her husband in a separate premises. The wife of Defendant No.3 is staying in the suit premises. Defendant No.4 is practicing Doctor in the city of Mumbai. Defendant No.4 along with his wife are staying in the suit premises. Defendant No.4 does not have children.

5. On behalf of the Plaintiffs, Plaintiff No.1 entered into the witness box and narrated her case as stated in the plaint. Plaintiff No.3 also entered into the witness box and was examined on behalf of the Plaintiffs. Both the witnesses were cross-examined on behalf of the Defendants. Only Defendant No.4 entered into witness box and gave his evidence on behalf of the Defendants.

6. During the pendency of proceedings before the Trial Court,

the landlords gave offer of an alternate accommodation to the Defendants. However, the said offer was rejected by the Defendants.

7. Learned Single Judge of the Small Causes after considering the evidence on record, decreed the suit for eviction on the ground of *bona-fide* requirements under Section 16(1)(g) of the Maharashtra Rent Control Act.

8. The Defendants being dis-satisfied by the judgment and order passed by the Trial Court, filed an appeal before the Division Bench of the Small Causes Court, Mumbai.

9. During the pendency of the appeal before the Division Bench of the Court of Small Causes, Mumbai, the Defendants have preferred Interim Applications to bring on record certain facts. All the Interim Applications were heard along with Appeal. The Appeal was dismissed by the Division Bench of the Court of Small Causes, Mumbai by a judgment and order dated 13 April 2023.

10. The present Civil Revision Application is filed challenging both the Judgments and Order passed by the Small Causes Court, Mumbai.

11. Counsel, Mr.Surel Shah, made his submissions on behalf of Applicants herein/original Tenants:

i). Mr.Shah stated that the need of the Plaintiffs is not *bona-fide*. He submitted that the need in fact is substantially for the family

of Devang Padrakar and after the death of Devang Padrakar, need is pressed for the wife and son of the deceased Devang Padrakar. However, the son of deceased Devang Padrakar, who is Plaintiff No.2 never entered into the witness box. He further submitted that Plaintiff No.1, died during pendency of the suit.

ii). Mr.Shah further submitted that the offer of alternate accommodation was given to Applicants in the Trial Court was not a *bona-fide* one, as the details of the said offer were not given. He submitted that in the Appellate Court his clients, the original defendants were ready to grab the offer if given by the Plaintiffs however, at the appeal stage, the said offer was declined.

iii). He submitted that there is suppression on the part of the Plaintiffs, as another accommodation available to the Plaintiffs in the area of 'Grant Road' was not disclosed.

iv). Mr.Shah to buttress his submission as referred to the two judgments of the Supreme Court. The first judgment referred to was of **Kishan Chand vs. Jagdish Pershad & Ors. reported in (2003) 9 SCC 151**. According to Mr.Shah this judgment of Supreme Court squarely applies to the present proceedings as the said judgment refers to concealment of material fact.

v). Mr.Shah also relied upon the judgment of Supreme Court in case of **Hasmat Rai & Ors. vs. Raghunath Prasad, reported in**

(1981) 3 SCC 103. Mr.Shah submitted that the said judgment specifically stated that need as pressed on the date of filing of the suit has to be consistent till the disposal of the proceedings.

12. On the other hand, Mr.Sharma, advocate appearing for the original landlords made his submissions.

i). Mr.Sharma pointed out the contents of the plaint. Mr.Sharma submitted that the Plaintiffs' desire is specifically mentioned in Plaint and in evidence. Mr.Sharma further stated that the landlords can't be dictated as to how they should manage their family in the premises, which is available to them.

ii). Mr.Sharma further stated that when the landlords offer an alternate accommodation to the tenants and the tenants refuses to shift in the alternate accommodation, then the decree of eviction should immediately follow. Mr.Sharma, stated that the tenants in the appellate stage after a period of ten years, can't state that they are now ready to shift to an alternate accommodation if offered by the landlords.

iii). Mr.Sharma also pointed out in the written statement it is the case of the Defendants that the Plaintiffs are in fact staying in the premises of 1700 sq. ft. and rest of the premises are terrace.

iv). Mr.Sharma further stated that the Trial Court and the Appellate Court have considered the entire facts and have accurately

recorded the reasons for decreeing the suit. Mr.Sharma further stated that under Section 115 of CPC the Applicants / tenants have not demonstrated any perversity.

v). Mr.Sharma also pointed out that the tenants are dictating the landlords how to modify their premises, and adjust their families in it.

vi). Mr.Sharma further submitted that the Letters of Administration as referred by the Applicants in their argument, was in fact disclosed by the Plaintiff No.1 in her affidavit of evidence. Therefore, there is no suppression of facts by the Landlords. Mr.Sharma further submitted that in the cross-examination, PW-1 has already disclosed that the said premises at Grant Road, Mumbai was sold. Mr.Sharma also pointed out that in any case the premises at Grant Road, Mumbai, the Applicants had 1/3rd share. Therefore, that premises was never available to them for residence. Mr.Sharma, submitted that the present Civil Revision Application has no merits, and should be dismissed.

ANALYSIS AND CONCLUSION

13. This Civil Revision is filed challenging the concurrent findings recorded by the Court of Small Causes, Mumbai. Before I consider the submissions of both the counsels, it is pertinent to note that the landlords on their own while the trial was pending, offered to

the tenants / Defendants an alternate accommodation. The said offer

was not accepted by the tenants. The tenants had replied as under :

“I will not going to accept any other accommodation having larger area if given to us by Plaintiff. I will ask to other defendants and then I will tell as to whether we are ready to accept the offer of Plaintiff to give us other premises, in the same vicinity, at the cost of plaintiff”.

14. The Appeal against eviction decree was filed by the tenants before the Division Bench of the Court of Small Causes, Mumbai in the year 2013 and an application that they are ready to accept the alternate accommodation was made by tenant only in the year 2018. However, the landlords refused to give offer for alternate accommodation after 10 years. This makes sense, as at the time of pendency of suit, the landlord wanted to put an end to the litigation, so that the families of Landlords, can stay together in the same building. As Landlords, had succeeded in Trial Court, and period of ten years had passed, the Landlords declined to give the same offer in Appellate Court.

15. In such a situation, the Courts below had no other option but to decree the suit in favour of the Plaintiffs as the tenants were adamant and were not ready to vacate the premises and accept alternate accommodation, when the suit was filed for *bona-fide* requirements of landlords.

16. Supreme Court, in the case of **Om Prakash vs. Bhagwan Das**, reported in **AIR 1986 SC 1643**, held that, if Landlord offers reasonable suitable accommodation, claim of Landlord shall be considered liberally. Finding recorded in this judgment, covers the issue in the present proceedings.

17. So also in the judgment of **S.B. Gaikwad vs. Iyer Subramanya Venkateswara**, report in **1990 (3) BCR 736**, this Court held that Landlord offering alternate premises, and the same is refused by tenant, hardship is in favour of Landlord. The conclusion of this judgment also applies to the present case in hand.

18. This Court in the judgment **Art Wood Shop vs. J.B. Pandit**, reported in **(1999) 3 BCR 144**, held that if tenant declined offer of room in adjacent building coupled with non-user, shows he is continuing litigation as a luxury. The ratio laid down in this judgment squarely applies to the present proceedings.

19. I have considered the findings recorded by both the Courts below. In paragraph nos.16 and 29, the Trial Court has specifically recorded its findings on *bona-fide* requirements. The fact that Plaintiff No.1 has died during the pendency of the suit does not help the tenants / Defendants. Since the need as pressed was of Plaintiff No.1 and Plaintiff No.2. Plaintiff No.2 is the son of Plaintiff No.1. The said son during the pendency of the suit got married and now has a

wife and daughter. All these members are staying in the same building at 5th floor, along with their cousin's family. Therefore, the need does not eclipse.

20. The judgment of **Hasmat Rai** (supra) referred by the Applicant, will therefore be not applicable to the present proceedings, as the facts in the said judgment were quite different. The Supreme Court in the judgment of **Gaya Prasad vs. Pradeep Srivastava**, reported in **(2001) 2 SCC 604**, have held that subsequent event does not affect the crucial date of Application for eviction slowness of the legal system cannot be made the basis for denying the landlord reliefs prayed.

21. The Appellate Court in its judgment in paragraphs 48 and 57 have carefully considered the issue about *bona-fide* requirements of Plaintiffs.

22. The Applicant / tenant has relied upon the judgment of **Kishan Chand** (supra). The said judgment does not apply to the present proceedings, as the Plaintiff No.1, in her affidavit of evidence, had brought on record the fact about another premises at "Grant Road".

23. The Plaintiffs, had disclosed that in the premises at 'Grant Road', they had 1/3rd share, and the said premises were sold. Therefore, the said premises were not available to the Plaintiffs /

Landlords to reside.

24. Considering the law laid down by the Supreme Court in the above judgments, and the fact that both the Courts below have carefully considered the need of the Plaintiffs. No case is made out to interfere with the concurrent findings. There is no irregularity pointed out by the Plaintiffs, in such a situation the Civil Revision Application is dismissed.

25. All the Applicants are granted 8 weeks time to vacate the suit premises from today, subject to all the Applicants filing an usual undertaking before this Court within a period of 10 days from today.

26. Interim Application, if any, stands disposed of.

(RAJESH S. PATIL, J.)