
(1991) 07 BOM CK 0028

In the Bombay High Court

Case No : Notice of Motion No. of 1991 In Suit No. 523 of 1991

Chandrakant Shankar Pradhan

APPELLANT

Vs

M/s. Verma Investment Corporation

RESPONDENT

Date of Decision : 15-07-1991

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 28
Civil Procedure Code, 1908 (CPC) — Section 94, 9A

Citation : AIR 1992 Bom 257 : (1992) 2 BomCR 85 : (1992) 2 MhLj 1016

Hon'ble Judges : D.R. Dhanuka, J

Bench : Single Bench

Advocate : C.A. Kaveria with P.P. Prabhu, for the Appellant; C.A. Joseph and H.K. Vardhan, for the Respondent

Judgement

1. This notice of motion is a glaring example of sad plight and distress of an erstwhile tenant and occupant who allowed his tenement to be demolished relying on the promise of defendants Nos. 1 to 4 --the Builders/ Developers to provide him with accommodation in new building on ownership basis. Several such erstwhile tenants are the victims of the wrong committed by defendants Nos. 1 to 4. On a careful scrutiny of the defence plea, I have found that each of the defence pleas is false and frivolous and the entire conduct of the defendants Nos. 1 to 4 is blameworthy.

2. The plaintiff has filed this suit against defendants Nos. 1 to 4 for specific performance of agreement dated 30th April 1979, compensation in sum of Rs. 6 lacs, compensation for abnormal delay caused by defendants Nos. 1 to 4 in completing construction of the building and various other reliefs. The plaintiff has impleaded defendants Nos. 5 to 7 as proper parties to the suit. The plaintiff has taken out notice of motion for appointment of receiver of the property and for various other reliefs including such appropriate reliefs as deemed fit. In the affidavit in support of the notice of motion, the plaintiff has sought specific direction of this Court for payment of Rs. 6 lacs as compensation etc. If the Court

accepts the plaintiff's allegations after due scrutiny that the defendants Nos. 1 to 4 have caused injustice to the plaintiff, the Court will have to mould the interim reliefs in light of equities of the case and the situation prevailing.

3. Relevant facts are as under:--

(a) The plaintiff is a retired employee of Bombay Port Trust, aged over 70 years. The plaintiff was tenant of a room on the first floor of an old building known as Malti Building situate at Andheri with carpet area of about 183 sq. feet, paying monthly rent of Rs. 12.73.

(b) Sometime in the year 1978, the defendant No. 1 purchased the suit property from one Manik Ramchandra Pathare. The said immovable property consisted of plots of land bearing C.T.S. No. 450, 450/1 and 450/2 and two old buildings known as Malti Building and Manik Ashram situate at Cama Road, Off Shri S. V. Road, Andheri (West), Bombay. Both the said buildings were occupied by 11 tenants including the plaintiff, defendant No. 7, one Laxmibai Patil who is unfortunately no more and whose heirs are defendants Nos. 5 and 6. Nine of the said occupants had served a notice on defendants Nos. 1 to 4 through their Advocates M/s. Kantilal Parikh & Co., Advocates, chatting upon them to comply with their solemn obligations under their respective agreements. Names of these occupants are set out in the said notice, a copy whereof is annexed as Exhibit "E" to the plaint.

(c) The defendants Nos. 1 to 4 jointly decided to develop the property after demolition of the existing structure. The defendant No. 2 was never the landlord of the property. The defendant No. 2 was described in the suit agreement duly signed by defendants Nos. 1 to 4 themselves as builders.

(d) On 30th April 1979, the defendants Nos. 1 to 4 induced the plaintiff to agree to execute a written agreement, vacate the tenement in his occupation and allow demolition thereof by the Builders/Developers. The defendants Nos. 1 to 4 induced almost all the occupants of the old building to enter into similar transactions. In the suit agreement of 30th April 1979, Mr. Manik Pathare is described as the Vendor, the defendant No. 1 is described as the purchaser and defendant No. 2 as the builder. It was recited in the said agreement that defendants Nos. 1 and 2 had jointly decided to develop the suit property by demolishing the existing structures. It was provided by the said agreement that the plaintiff had agreed to the demolition of tenement in his occupation. Defendants Nos. 1 and 2 both as builders-developers had agreed to provide temporary alternate accommodation to the plaintiff for his residence and allot accommodation in the new building to be constructed on the said plots on ownership basis free of cost, as more particularly set out therein. The plaintiff relied on the representations made by defendants Nos. 1 and 2 as set out in the agreement. The defendants Nos. 1 and 2 were represented by defendants Nos. 3 and 4. The plaintiff vacated his tenement and allowed the same to be demolished by defendants Nos. 1 to 4. Similarly, almost all the erstwhile tenants, except one

Smt. Laxmibai Patil, vacated their respective premises and allowed their tenements to be demolished by defendants Nos. 1 to 4. All this happened a decade back. Smt. Laxmibai Patil was in occupation of three rooms in one of the two buildings. Laxmibai vacated one of the three rooms. Laxmibai Patil filed a suit in the Court of Small Causes at Bombay, being R.A. Declaratory Suit No. 2167 of 1981, against the said Manik Ramchandra Pathare and new purchasers of the suit property. By his order dated 4th February 1982, the learned Judge of the Court of Small Causes at Bombay vacated his ex parte injunction granted by the Court earlier whereby the defendants to the said suit were restrained from demolishing the structures occupied by Laxmibai Patil. The said Laxmibai Patil died during the pendency of the said suit. The defendants Nos. 5 and 6 in this suit were substituted as party plaintiffs in the said declaratory suit. The defendant No. 1 filed a suit in the Bombay City Civil Court, being Suit No. 7057 of 1981, against defendants Nos. 5 and 6 seeking mandatory injunction against defendants Nos. 5 and 6 to vacate their old premises and to occupy the alternate accommodation. The defendants Nos. 1 to 4 withdrew the said suit. The defendants Nos. 1 to 4 did not take any step thereafter to get the two tenements in the old building vacated by defendants Nos. 5 and 6. The old buildings are partly demolished.

(e) The plaintiff and defendant No. 1 are provided by defendants Nos. 1 to 4 with transit accommodation which admittedly is in totally unhygienic and deplorable condition.

(f) The defendants Nos. 1 to 4 had started construction of the new building to some extent about a decade back, but stopped the same very soon.

(g) The tenancy of the plaintiff in respect of the said room came to an end on the tenement being demolished.

(h) On 30th October 1984, 9 out of the 11 tenants served a notice on defendants Nos. 1 to 4 through their Advocates M/s. Kantilal Parikh and Co., stating all the facts and pointing out in substance as to how the erstwhile tenants have been duped by defendants Nos. 1 to 4. The defendants Nos. 1 to 4 did not even bother to send any reply to the said notice. The defendants Nos. 1 to 4 have no regard for truth and sanctity of their obligations. The defendants Nos. 1 to 4 are unconcerned with plight of others for which they alone are to be blamed. The plaintiff served another notice through his Advocate, being notice dated 23rd April, 1988, on defendants Nos. 1 and 2. A copy of the said notice is annexed to the plaint as Exhibit "G". The defendants Nos. 1 to 4 did not reply to the notice.

(i) Ultimately, the plaintiff instituted criminal proceedings against defendants Nos. 1 to 4 on the charge of cheating and in respect of various other offences alleged to have been committed by the said defendants, including for alleged violation of the provisions of the Maharashtra Ownership Flats Act, 1963. The said criminal case was filed by the plaintiff on or about 2nd September 1988. The said criminal case was numbered as Case No. 142 of 1988. The learned

Metropolitan Magistrate issued process on the complaint which was duly served on the accused. The accused made an application to the Court, being application dated 21st February, 1989, for their discharge. The said application was rejected by the learned Metropolitan Magistrate by his order dated 24th April 1990. A Revision Application preferred by the accused is still pending before the Court of Sessions. The hearing of the said criminal case is stayed by the Sessions Court, says Mr. Joseph, the learned counsel for defendants Nos. 1 to 4.

(j) In paragraph 17 of the plaint, the plaintiff has given a graphic description of the horrible and terrible condition of the transit accommodation in use of the plaintiff. The defendants Nos. 1 to 4 cannot deny that the transit accommodation is not habitable and the plaintiff is thus in distress. The defendants Nos. 1 to 4 claim to be unconcerned with the plight of the plaintiff as all the remedies of the plaintiff are time-barred, according to the defence plea. The conduct of the defendants Nos. 1 to 4 is shocking.

(k) The plaintiff has filed this suit for specific performance of the suit agreement, being agreement dated 30th April 1979, and for compensation in lieu thereof as well as compensation for delay caused by defendants Nos. 1 to 4 in allotting the promised accommodation. It was alleged by defendants Nos. 1 to 4 at one stage that the defendants Nos. 5 and 6 obstructed the project of constructing new buildings. The plaintiff has, therefore, impleaded defendants Nos. 5 and 6 in this suit seeking all necessary directions against defendants Nos. 5 and 6 in the matter as deemed fit. The defendants Nos. 5 and 6 did not appear before this Court (though duly served with notice) at the stage when the application for ad interim relief was made by the learned counsel on behalf of the plaintiff. Defendants Nos. 5 and 6 refused to accept the service. An affidavit of service was filed on behalf of the plaintiff. I directed the learned Advocate for the plaintiff to send a telegram to defendants Nos. 5 and 6 and also a letter informing them to remain present at the adjourned date of hearing of the notice of motion in order to provide one more opportunity to them. The defendants Nos. 5 and 6 have chosen to remain absent at the hearing.

4. It has been contended by the learned counsel for the defendants Nos. 1 to 4 that this Court has no jurisdiction to entertain the suit. The learned counsel for defendants Nos. 1 to 4 has relied upon the provisions of Section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as the Bombay Rent Act) and the judgment of this Court in the case of Dattatraya Krishna Jangam Vs. Jairam Ganesh Gore, . I have, therefore, framed the issue of jurisdiction as a preliminary issue as required u/s 9A of the Code of Civil Procedure. The said issue reads as.

"Whether this Court has jurisdiction to entertain this suit?"

I answer the issue in affirmative for the reasons set out hereinafter.

5. It is well settled that the issue of jurisdiction must be determined on the basis of averments made in the plaint. It is the case of the plaintiff in the plaint that

the tenancy of the plaintiff was in respect of the old room in the old building. It is the case of the plaintiff that the said tenancy came to an end when the old room was demolished. The plaintiff is seeking to enforce his right to obtain the premises allotted to him in the new building on ownership basis. To such a suit the provisions of Section 28 of the Bombay Rent Act can never have any application. M/s. Sushma Builders, defendants No. 2, are parties to the suit agreement as builders. The defendants Nos. 1 to 4 are sued by the plaintiff in their capacity as builders-developers. This suit is not filed by a tenant against a landlord for possession of premises which are let out to the tenant. There is no subsisting relationship of landlord and tenant between the plaintiff and defendants Nos. 1 to 4. There was never a relationship of landlord and tenant between the plaintiff and defendant No. 2. When the suit agreement is specifically enforced, the plaintiff would be able to acquire the allotted accommodation in the new building on ownership basis and not as a tenant. It has been stated in paragraph 20 of the plaint that the reliefs claimed in the plaint are for enforcement of the suit agreement between the plaintiff and the builders. I am, therefore, satisfied that Section 28 of the Bombay Rent Act has no application whatsoever to the suit filed. Neither of the parties to the suit are landlord and tenant in respect of the suit premises nor the reliefs claimed in the suit postulate subsisting relationship of landlord and tenant. The judgment relied upon by the learned counsel for defendants Nos. 1 to 4 has no application to this case.

6. The learned counsel for defendants Nos. 1 to 4 has then contended that the suit agreement is frustrated as defendants Nos. 1 to 4 could not construct the suit building by reason of circumstances beyond their control. With respect to the learned counsel for defendants Nos. 1 to 4, this plea is ex facie dishonest and without any legal merit. The defendants Nos. 1 to 4 have taken no action or moved their little finger to complete the project all these years. Why did defendants Nos. 1 to 4 withdraw the eviction suit filed by them against defendants Nos. 5 and 6 in the Bombay City Civil Court ? The defendants Nos. 1 to 4 put up a false show of filing a suit against defendants Nos. 5 and 6 in the City Civil Court at Bombay and then quietly withdrew the same. The defendants Nos. 1 to 4 appear to be under the belief that they would undertake the project after all the erstwhile tenants abandon their claim on being tired out as a result of dilatory strategies of defendants Nos. 1 to 4.

7. The learned counsel for defendants Nos. 1 to 4 has then submitted that this suit is barred by law of limitation. There is no merit in this contention also.

8. The learned counsel for defendants Nos. 1 to 4 has then relied on clause 16 of the agreement and has submitted that the plaintiff has an alternate remedy to insist on obtaining similar accommodation elsewhere or monetary compensation. The learned counsel for defendants Nos. 1 to 4 submits that clause 16 of the suit agreement operates as a bar to the suit for specific performance. I totally disagree. The plaintiff's legal right to such specific performance of the suit

agreement is not barred by clause 16 of the agreement. Clause 16 confers additional rights on the plaintiff and does not deprive the plaintiff of his normal remedies.

9. The defendants Nos. 1 to 4 have made a statement to the effect that the defendants Nos. 1 to 4 will carry out repairs to the transit accommodation as mentioned in Exhibit 1 to the affidavit in reply dated 11th March 1991. The defendants Nos. 1 to 4 are bound to carry out the repairs and ought to have done so much earlier. However, carrying out repairs to transit accommodation would not be enough. It is time to recall the words of Father of Nation, Mahatma Gandhi, extracted in the judgment of the Supreme Court as a supreme guide in matters of this kind. It was observed by the Hon'ble Mr. Justice Chandrachud in the case of His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, :

"We are all conscious that this vast country has vast problems and it is not easy to realise the dream of the Father of the Nation to wipe every tear from every eye."

In my humble belief, all of us belonging to judiciary must grant immediate substantial relief to the little man with tears in his eye when an appropriate case is made out rather than directly or indirectly allowing dragging of the litigation indefinitely. The Bar must also co-operate, as it normally does. I do ask myself the question again and again why the criminal proceedings are not being disposed of or proceeded with. I find no satisfactory answer to the problem. If the same situation continues, people are bound to lose faith in judiciary. I hold that the conduct of defendants Nos. 1 to 4 is totally blameworthy. Law of granting interim compensation to the victims concerned is fast developing. In a case like this, substantial interim compensation will have to be awarded to the plaintiff at this stage itself. It will be mockery of justice to deny effective relief to the plaintiff. In the circumstances, after evaluating all the facts and circumstances of the case and having regard to the situation of distress in which the plaintiff is placed by the defendants Nos. 1 to 4, I pass the following order :

10. I hold that the plaintiff has made out a strong prima facie case and justice of the case lies on the side of the plaintiff and each of the contention raised on behalf of defendants Nos. 1 to 4 is false and frivolous to the knowledge of the defendants. In exceptional cases of undue hardship and patent liability of the defendant, the Court has inherent jurisdiction and solemn duty to award interim compensation. If such a power is not exercised in a deserving case, law will cease to be an effective instrument of rendering justice. The situation in this case is not so grave as in the case of Bhopal tragedy, but is grave enough to warrant grant of interim relief. Section 94(e) of the CPC is a clear pointer in respect of existence of such a power in the Court. Hence I order:--

(1) Court Receiver, High Court, Bombay, is appointed as Receiver of the entire project and the suit property inter alia consisting of Plots C.T.S. 450, 450/1 and

450/2 and the existing structures thereon, old and new, with a direction not to dispossess any of the occupants for the moment except in accordance with this order or leave of this Court and evolve a scheme for construction of new building as contemplated in the suit agreement. The Court Receiver shall convene meeting of all the former tenants and consider their suggestions regarding resumption of construction work at the cost of defendants Nos. 1 to 4. The defendants Nos. 1 to 4 shall not be appointed as agents of the Court Receiver on any view of the matter.

(2) The Defendant No. 7 is directed to assist the Court Receiver in the construction of the new building.

(3) The Defendants Nos. 5 and 6 are restrained from causing any obstruction whatsoever in construction of new building. If necessary, the Court Receiver shall direct defendants Nos. 5 and 6 to vacate their old tenements as a temporary measure on the condition that defendants Nos. 5 and 6 shall also be accommodated in the new building in accordance with the agreement. If defendant No. 1 refuses to provide the necessary funds for the construction work, the erstwhile tenants may do so on account of defendant No. 1 and recover the amounts so spent from defendants Nos. 1 to 4.

(4) The learned Metropolitan Magistrate is requested to proceed with the criminal case, being Case No. 142 of 1988, day-to-day soon after the stay is vacated. The learned Sessions Judge is requested to dispose of the Revision Application No. 28 of 1990 within one month from today.

(5) Having regard to the delay of about 12 years after the premises of the plaintiff were demolished, the question arises as to what order should be passed on account of interim compensation. The plaintiff is claiming a sum of Rs. 6 lacs from defendants Nos. 1 to 4. The defendants Nos. 1 to 4 are directed by interim mandatory order of this Court to pay a sum of Rs. 1 lac to the plaintiff as interim compensation in the following manner :

Rs. 50,000/- on or before 17th July 1991;

Rs. 50,000/- on or before 22nd July 1991.

In case the amount is not paid, the plaintiff shall be at liberty to adopt contempt proceedings or execution proceedings or both.

(6) The defendants Nos. 1 to 4 are further directed to pay further interim compensation of Rs. 1,000/- every month to the plaintiff till the new accommodation is provided. The first of such additional amount of Rs. 1,000/- per month shall be paid by defendants Nos. 1 to 4 to the plaintiff on 2nd September 1991. It shall be open to defendants Nos. 1 to 4 to deposit the amount in the Court. In such a case the plaintiff shall be entitled to withdraw the said amount forthwith. The Prothonotary & Senior Master shall allow withdrawal of the amount forthwith.

(7) The defendants Nos. 1 to 4 shall pay a sum of Rs. 1,000/- to the plaintiff towards costs of this Notice of Motion.

(8) Hearing of the suit is expedited. The defendants Nos. 1 to 4 shall file their written statement within one week from today. The suit be placed on board on 3rd September 1991 for final hearing.

(9) The Court Receiver shall inform about this order to all the erstwhile tenants who had suffered similar misfortune. The list of such erstwhile tenants is to be found, to some extent, in the letter addressed by M/s. Kantilal Parikh & Co., Advocates, to defendants Nos. 1 to 4, copy whereof is annexed to the plaint.

(10) The defendants Nos. 1 to 4 shall commence repair of the transit accommodation forthwith and shall complete the same expeditiously. The repairs to be carried out are particularised in Exhibit 1 to the affidavit in reply.

11. The defendants Nos. 1 to 4 apply for stay of this order. Application for stay is refused.

12. The Court Receiver to act on the certified copy of this order or ordinary copy of the order authenticate by the Associate. The Prothonotary & Senior Master shall issue certified copy of this order expeditiously.

13. Order accordingly.