

(2024) 03 BOM CK 0096

In the Bombay High Court

Case No : Civil Revision Application No.420 Of 2023, IA No. 6955 Of 2024 In Criminal Appeal No. 420 Of 2023

Shridhar K. Berde

APPELLANT

Vs

Ranjeetmal J. Oswal, Since Deceased Thr. L. Rs. Vasnatibai R. Oswal & Ors

RESPONDENT

Date of Decision : 18-03-2024

Acts Referred:

Code Of Civil Procedure, 1908 — Section 115

Maharashtra Rent Control Act, 1999 — Section 13, 13(G), 16, 16(1)(g), 16(i), 16(1)(i), 16(6), 16(6)(d)

Citation : (2024) 03 BOM CK 0096

Hon'ble Judges : Sandeep V. Marne, J

Bench : Single Bench

Advocate : Raju Suryawanshi, Vijay H. Kantharia, Suraj Naik, Shubhada S. Salvi?

Final Decision : Allowed

Judgement

Sandeep V. Marne, J

1. Applicant has filed this Revision Application challenging the decree dated 19 April 2023 passed by the Principal District Judge, Ratnagiri in Regular Civil Appeal No.19 of 2022 thereby dismissing the Petitioner's Appeal and confirming the decree dated 31 March 2022 passed by the Civil Judge, Junior Division, Ratnagiri in Regular Civil Suit No.290 of 2014. The Trial Court has decreed the suit filed by the Plaintiff-Landlord for eviction and has directed the Applicant to handover vacant and peaceful possession of the premises.

2. Briefly stated, facts of the case are that one Mr. Vinayak Purushottam Dali originally owned the entire Municipal House No.2481, in which Applicant and one Ranjitmal Shahuraj Oswal were monthly tenants. Applicant is monthly tenant in respect of Gala No.1 whereas said Ranjitmal Oswal was the tenant in respect of neighbouring Gala No.2. Mr. Ranjitmal Oswal purchased the entire property bearing Municipal House No.2481 from the owner Vinayak Dali vide registered

sale-deed dated 27 May 2011 and thus become the landlord qua Applicant in respect of Gala No.1. As observed above, Plaintiff Ranjitmal Oswal was already possessing the neighboring Gala No.2 in capacity as tenant of original owner Vinayak Dali.

3. Soon after purchase of the entire property bearing Municipal House No.2481, Plaintiff-Ranjitmal Oswal filed RCS No.290 of 2014 before the Civil Judge, Senior Division against Applicant seeking recovery of possession of Gala No.1 in Municipal House No.2481 (suit premises) from the Applicant. Plaintiff pleaded his bonafide need in respect of the suit premises. He also pleaded that he intended to redevelop the entire property bearing Municipal House No.2481 for the purpose of expansion of the business and for his son. The suit was resisted by Applicant by filing written statement. During pendency of the suit, original Plaintiff-Ranjitmal Oswal passed away and his legal heirs were brought on record. The Trial Court proceeded to decree the suit by Judgment and Order dated 31 March 2022, holding that the Plaintiff requires the suit premises for his bonafide need and that greater hardship would be caused to the Plaintiff by refusing the decree for eviction. The Trial Court therefore directed Applicant to deliver possession of the suit premises to the Plaintiff within 03 months.

4. Aggrieved by the decision of the Trial Court, Applicant preferred Regular Civil Appeal No.19 of 2022 in the Court of Principal District Judge, Ratnagari. During pendency of the Appeal, it appears that Applicant's possession was protected. The Appellate Court, after hearing both the sides, dismissed the Appeal filed by the Applicant by Judgment and Order dated 19 April 2023. Aggrieved by the decisions of the Trial Court and the Appellate Court, the Applicant has filed the present Civil Revision Application under provisions of Section 115 of the Code of Civil Procedure, 1908.

5. Mr. Suryawanshi, the learned counsel appearing for Applicant would submit that the Trial Court erred in the decreeing the suit against Plaintiff without appreciating the fact that the eviction of the Applicant was sought by Plaintiff on the ground of need for demolition and redevelopment of the entire structure. That therefore the suit was essentially filed under provisions of Section 16(1)(i) of the Maharashtra Rent Control Act, 1999 (Rent Act). That bonafide need pleaded under Section 16(1)(g) of the Rent Act was not the real reason why possession of the suit premises was sought. That Plaintiff specifically pleaded in paragraph No.5 of the plaint that possession of the suit premises were needed by him for the purpose of demolishing property bearing Municipal House No.2481 for redevelopment purpose. That under Section 16(6) of the Rent Act, demolition of old structure and construction of new structure by the landlord is subject to allotment of carpet area equivalent to the area of the premises in occupation of the tenant in the demolished building. That the Trial Court and the Appellate Court have completely glossed over Plaintiff's case as pleaded in paragraph No.5 of the plaint as reiterated in affidavit of evidence. That Applicant does not have any objection for allotment of equivalent area in reconstructed building and

therefore the eviction of the Applicant is not warranted in the facts and circumstances of the present case.

6. Mr. Suryawanshi would further submit that the ground of bonafide need pleaded by Plaintiff ought to have been considered by the Trial Court and the Appellate Court in the right perspective where the real bonafide need is for demolition of entire structure. Even otherwise, Mr. Suryawanshi would submit that the Applicant successfully proved before the Trial Court that Plaintiff owned and possessed several other premises which could have been given by him for use of his son. Mr. Suryawanshi would therefore pray for setting aside the decree of eviction passed by the Trial Court and upheld by the Appellate Court.

7. Per contra, Mr. Kantharia, the learned counsel appearing for Respondent / original Plaintiffs would oppose the Revision Application and would support the Orders passed by the Trial Court and First Appellate Court. He would submit that Plaintiff's suit was essentially on account of bonafide need under Section 16(1) (g) of the Rent Act. He would submit that proposed demolition of the structure was only an additional ground raised in the plaint and that the suit was not filed seeking eviction under Section 16(1)(i) of the Rent Act. That therefore the Trial Court and First Appellate Court have rightly not treated Plaintiff's suit as the one filed under Section 16(1)(i) of the Rent Act. Mr. Kantharia would invite my attention to the written statement, in which Applicant / Defendant denied the contents of paragraph No. 5 of the plaint. That the Defendant himself contested correctness of the proposal of the Plaintiff for demolition of the structure. That Defendant is therefore estopped now from relying on Plaintiff's pleadings in paragraph No.5, correctness of which was disputed by the Defendant.

8. Mr. Kantharia would submit that in Revision Application filed under Section 115 of the Code, Applicant cannot be permitted to setup a new case or raise a new ground which was not raised before the Trial Court and Appellate Court. In support of his contentions, he would rely upon following Judgments :

i) Vasantrao Gudacharva Jahagirdar Vs. Sharanbasappa Vishwanath Halli, 2008 (1) Mh. L. J. 955.

ii) Food Corporation of India & Anr. Vs. Yadav Engineer & Contractor, (1982) 2 SCC 499.

iii) ABL International Ltd. Vs. Sajjan Kumar Tantia, 2014 SCC OnLine Cal 17352.

iv) Madan Mohan Kotal Vs. Gobinda Kotal & Anr., (2002) 9 SCC 457.

9. Mr. Kantharia would submit that landlord can raise multiple grounds for seeking recovery of possession and even if one ground is proved, eviction of the tenant can be ordered. That the only ground raised for seeking eviction of Applicant was bonafide requirement of the tenant. That Applicant's alleged entitlement towards grant of any alternate premises in the redeveloped building was never an issue before the Trial Court or the Appellate Court. That therefore it can safely be assumed that Applicant is attempting to raise a new case which

was neither pleaded nor proved before the Trial Court and First Appellate Court. Mr. Kantharia would submit that it is not for the tenant to decide as to what is the bonafide need of the landlord and the tenant has no right to retain possession once landlord's bonafide need is proved. Therefore, the defence of availability of other Galas for satisfaction of bonafide need of landlord raised by the Applicant has rightly been rejected. He would pray for dismissal of the Revision Application.

10. Rival contentions of the parties now fall for my consideration.

11. The relationship between Plaintiff as landlord and Defendant as tenant is not in dispute. In fact, Plaintiff himself was a tenant in respect of the Gala adjoining the suit premises prior to purchase of the entire structure bearing House No.2481 by Plaintiff from the original landlord Vinayak Purushottam Dali. Said purchase transaction was effected vide registered Sale Deed dated 27 May 2011. The Plaintiff has been running a jewelry shop in the adjoining Gala. Upon acquisition of ownership in respect of the entire structure, Plaintiff desired eviction of defendant from suit premises and served a notice dated 02 October 2014 on him. Plaintiff thereafter instituted RCS No.290 of 2014 seeking Defendant's eviction from the suit premises. In the title, the suit was described as filed under Section 16(1)(g) of the Rent Act. Perusal of the Judgments rendered by the Trial Court and the Appellate Court would indicate that suit of the Plaintiff is treated by both the Courts as having been filed under Section 16(1) (g) of the Rent Act. The Applicant however pleads that the suit ought to have been treated as the one filed under Section 16(1)(i) of the Rent Act.

12. Under Section 16(1)(g) of the Rent Act, the landlord is entitled to seek recovery of possession if the premises are reasonably needed for bonafide requirement by the landlord for occupation by himself or by any other person for whose benefit the premises are held. As against this, landlord is entitled to seek recovery of possession of premises under Section 16(1)(i) if a premises are reasonably and bonafide required by the landlord for the immediate purpose of demolition and such demolition is to be made for the purpose of erecting new building on the premises sought to be demolished.

13. The provisions of clause (g) and (i) of sub-section 1 of Section 16 reads thus :

16. When landlord may recover possession.

(1)....

(g) that the premises are reasonably and bona fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held or where the landlord is a trustee of a public charitable trust that the premises are required for occupation for the purposes of the trust;

(h).....

(i) that the premises are reasonably and bona fide required by the landlord for

the immediate purpose of demolishing them and such demolition is to be made for the purpose of erecting new building on the premises sought to be demolished;

14. However, in respect of suit for recovery of possession filed under clause (i) of sub-section 1 of Section 16, special conditions are prescribed under sub-section 6. Section 16(6) reads thus :

16. When landlord may recover possession.

(1)

(6) No decree for eviction shall be passed on the ground specified in clause (i) or

(j) of sub-section (1), unless the court is satisfied-

(a) that the necessary funds for the purpose of the erection of new building or for erecting or raising of a new floor or floors on the terrace are available with the landlord,

(b) that the plans and estimates for the new building or new floor or floors have been properly prepared;

(c) that the new building or new floor or floors to be erected by the landlord shall, subject to the provisions of any rules, bye-laws or regulations made by municipal authority contain residential tenements not less than the number of existing tenements which are sought to be demolished;

(d) that the landlord has given an undertaking.-

(i) that the plans and estimates for the new building or new floor or floors to be erected by the landlord include premises for each tenant with carpet area equivalent to the area of the premises in his occupation in the building sought to be demolished subject to a variation of five per cent in area;

(ii) that the premises specified in sub-clause (i) will be offered to the concerned tenant or tenants in the re-erected building or, as the case may be, on the new floor or floors;

(iii) that where the carpet area of premises in the new building or on the new floor or floors is more than the carpet area specified in sub-clause (i) the landlord shall, without prejudice to the liability of the landlord under sub-clause (i), obtain the consent 'in writing' of the tenant or tenants concerned to accept the premises with larger area; and on the tenant or tenants declining to give such consent the landlord shall be entitled to put the additional floor area to any permissible use;

(iv) that the work of demolishing the premises shall be commenced by the landlord not later than one month, and shall be completed not later than three months, from the date he recovers possession of the entire premises; and (v) that the work of erection of the new building or new floor or floors shall be completed by the landlord not later than fifteen months from the said date:

Provided that, where the court is satisfied that the work of demolishing the premises could not be commenced or completed, or the work of erection of the new building or, as the case may be, the new floor or floors could not be completed, within time, for reasons beyond the control of the landlord, the court may, by order, for reasons to be recorded. extend the period by such further periods, not exceeding three months at a time as may, from time to time, be specified by it, so however that the extended period shall not exceed twelve months in the aggregate.

15. Thus, under sub-section 6 of Section 16, no decree for eviction under clause (i) of sub-section 1 can be passed unless the landlord gives an undertaking that the plans and estimate for a new building to be erected by the landlord includes premises for each tenant with carpet area equivalent to the area of premises in his occupation in the building sought to be demolished. The further condition is for offering premises in the re-erected building on the same floor.

16. Thus, if the suit filed by the Plaintiff in the present case is to be construed as the one filed under clause (i) of Section 16(1), mandatory condition prescribed in clause (d) of sub-section 6 of Section 16 is required to be satisfied. It is the case of the Applicant that his eviction was sought by Plaintiff for the sole purpose of demolishing existing structure and erecting new building and therefore the suit must be treated the one filed under clause (i) of the Section 16(1) of the Rent Act. On the other hand, it is the case of the Plaintiff that the suit was filed under clause (g) of Section 16(1) and the provisions of clause (d) of sub-section 6 are inapplicable to the present case.

17. The short controversy that therefore about the exact clause of Section 16(1) under which the Suit was filed. Before I proceed to determine the above controversy, it is necessary to first deal with objection raised by the Respondent / Plaintiff that the issue of Plaintiff's suit been filed under clause (i) of Section 16(1) was never raised by the Defendant / Applicant before Trial Court. In my view, the suit for eviction is filed by Plaintiff and the nature of that suit will have to be determined on the basis of pleadings raised in the plaint by the Plaintiff. The stand taken by the Defendant in this regard becomes irrelevant. The issue about decree of eviction being passed under clause (g) or clause (i) of Section 16(1) will depend upon pleadings raised by Plaintiff, evidence produced by him and findings recorded by the Court while passing decree for eviction. Therefore, reliance of Mr. Kantharia on denial in written statement of contention raised by Plaintiff in paragraph No.5 is totally irrelevant. It therefore cannot be contended that the Defendant did not raise the issue before the Trial Court. In fact, raising of the issue about the exact clause under which eviction was sought was not even required to be raised by Defendant. It was for the Trial Court to decide whether it was passing decree under clause (g) or clause (i) of Section 16(1). The exact ground on which decree of eviction is passed became ultimately clear only when the suit was decreed by the Trial Court. In his Appeal memo Applicant specifically raised ground of clause 16(1)(i) and that his eviction was sought

solely for the purpose of construction of new premises by demolishing House bearing No.2481. It therefore cannot be contended that Applicant is seeking to raise a new ground for the first time in Revision filed under Section 115 of the Code. Therefore, reliance of Mr. Kantharia on the Judgments of Vasantrao Gudacharva Jahagirdar, Food Corporation of India, ABL International Ltd. and Madan Mohan Kotal (supra) is totally misplaced.

18. I therefore proceed to decide the main controversy raised by the parties about the ground on which decree of eviction was sought by the Plaintiff. For that purpose, it is necessary to consider Plaintiff's pleadings in the plaint. In paragraph Nos.4 to 6 of the plaint, Plaintiff pleaded as under:

19. Thus, in paragraph No.5 of his plaint, Plaintiff specifically pleaded that he had desired to demolish the building and to construct a new building and had submitted plans to the Nagar Parishad for construction of new building. He further pleaded that in the new building to be constructed, he had intended to give one Gala each for himself and for his son Bhupesh Ranjitmal Oswal and the premises on the first floor were to be used for executing labour work and at times for residence of the workers. Thus, the real purpose why the suit for recovery of possession was filed by the Plaintiff was clearly apparent from pleadings in paragraph No.5 of the plaint.

20. Before institution of the suit, Plaintiff issued notice dated 2nd October 2014 on Defendant. In that notice Plaintiff stated as under :

21. Thus, even in the notice dated 02 October 2014, Plaintiff clearly stated that he intended to construct a new building by demolishing old structure. The only variance between the contents of notice dated 02 October 2014 and paragraph No.5 of the plaint was the intended purpose of use of new building. In the notice, Plaintiff stated that he intended to give entire ground floor for business of his son and the first floor for his son's residence / carrying out labour work. In paragraph No.5 of the plaint, he pleaded that two Galas on ground floor were to be used by him and his son whereas first floor premises were to be used only for labour work/residence of labour. Leaving aside the intended purpose for which the newly constructed building was to be used, the purpose for seeking Defendant's eviction was common both in notice as well as in the plaint. Said purpose was demolition of old structure and construction of new building. In that view of the matter, though Plaintiff titled the suit as the one filed under Section 16(1)(g), the same was actually filed under clause (i) of Section 16(1) of the Rent Act. In fact, the nature of the suit would depend not on title declared by the Plaintiff but on the basis of pleadings raised in plaint. The title is in handwriting and states 'Suit U/S 13 (G) MAH the Rent Control Act.' The title is clearly faulty as it referred to Section 13 of the Rent Act (possibly of the Bombay Rents, Hotels and Lodging Houses Rent Control Act, 1947, which had no application to present case) when the same ought to have been filed under Section 16 of the Rent Act. Be that as it may. As observed above, the nature of suit would not depend on the title mentioned by the Plaintiff, but the nature of pleadings raised by him would be

the determinative factor.

22. Plaintiffs led evidence. By that time, original Plaintiff Ranjitmal was dead and therefore affidavit of evidence was filed by his son Shri. Bhupesh Ranjitmal Oswal. In paragraph No.5 of the evidence affidavit dated 24 August 2016, he stated as under :

23. Other son of original Plaintiff Shri. Bhupeshkumar Ranjitmal Oswal also led evidence by filing affidavit of evidence on 13 September 2017, in which he deposed as under :

24. Thus, both Plaintiffs gave specific evidence before the Trial Court that they intended to demolish the old structure and to redevelop property by construction of new building.

25. Thus, both in plaint as well as in evidence, Plaintiffs came with a specific case that recovery of possession was indeed for the sole purpose of demolition of old structure and construction of new building in that place. Thus, decree of eviction was sought under clause (i) of the Section 16(1) of the Rent Act. This aspect has been completely overlooked by the Trial Court and the Appellate Court.

26. Perusal of the findings recorded by the Trial Court would indicate that it has not given any consideration to the fact that it was passing decree for eviction under clause (i) of Section 16(1) of the Rent Act. In paragraph No.17 of the Judgment, the Trial Court has taken note of the affidavit of evidence filed by Plaintiff Nos. 2 and 4 about their desire to construct new premises befitting their business needs. However, the Trial Court failed to appreciate that passing of decree for eviction for bonafide need of the landlord for demolition of existing building and for construction of new building attracted provisions of clause (d) of sub-section 6 of Section 16 of the Rent Act. Both the Trial and the First Appellate Court completely ignored the fact that Plaintiff approached the Court seeking recovery of possession only for the purpose of demolition of the existing structure and for construction of new building. If this was the position, both Trial and the Appellate Court ought to have ensured that the decree for eviction is not passed in absence of filing of undertaking by the landlord under clause (d) of sub-section 6 of Section 16 of the Rent Act.

27. Though Mr. Kantharia attempted to blame the Applicant for not raising the plea of allotment of equivalent premises in the new building, such attempt is clearly negated by the suggestion given to Plaintiffs' witness in the cross-examination. Applicant clearly and repeatedly give suggestions to Plaintiff No.2- Jignesh Ranjitlal Oswal about availability of developable constructed space in new building for accommodation of the Defendant. The following deposition given by Plaintiff No.2 in his cross-examination shows case being put up by Defendant about his entitlement to n

28. Plaintiff No.4-Bhupesh Ranjitmal Oswal deposed in his cross-examination as under :-

29. In my view therefore, the decree for eviction was sought by the Plaintiff solely for the purpose of demolition of the existing structure and for construction of new building. As averred in the plaint, Plaintiff had already submitted plans for development permission before the Nagar Parishad. Despite such clear ground akin to clause (i) of Section 16 of the Rent Act being made out, the Trial Court and Appellate Court failed to ensure that condition of clause (d) of sub-section 6 of Section 16 was followed before while ordering Defendant's eviction.

30. The decree of eviction of the Defendant / Applicant in the present case permits Plaintiffs to demolish the existing structure and to construct a new building without providing equivalent carpet area to the Defendant which is a statutory requirement under clause (d) of Section 16(6) of the Rent Act. The objective behind incorporation of clause (d) of Section 16(6) of the Act is to ensure that the landlord does not use the pretext of reconstruction of the building for the purpose of obtaining possession from tenants. Bonafide need of landlord under clause (g) of Section 16(1) for occupation by himself cannot be confused the bonafide requirement of possession of premises for demolition of the structure and erection of new building. Averments in the plaint as well as evidence led by Plaintiffs leave no manner of doubt that they never intended to use the suit premises as they stand, but they wanted to use the reconstructed premises in the new building. The Trial and the Appellate Court failed to appreciate this basic difference between the provisions of clause (g) and (i) of Section 16(1) of the Rent Act. Once Plaintiff approached the Trial Court with a specific case that he wanted to demolish the building, construct a new building and use two Galas on ground floor in the new building for himself and for his son and the first floor for labour work / residence of workers, it became abundantly clear that Plaintiff never required suit premises 'for occupation by himself or by any person for whose benefit the premises are held.' Therefore, clause (g) of Section 16(1) was wholly inapplicable to the present case and what got attracted was clause (i) of Section 16(1).

31. In exercise of jurisdiction under Section 115 of the Code, the jurisdiction of this Court is no doubt narrow. However, once this Court notices a patent error in the Orders passed by the Trial Court and the Appellate Court, this Court would not turn a blind eye and allow the perpetration of such patent error on a specious plea of limitation on its revisionary jurisdiction under Section 115 of the Code. The Trial Court has committed a material irregularity which needs to be corrected by this Court in exercise of revisionary jurisdiction under Section 115 of the Code.

32. The decree passed by the Trial Court as upheld by the Appellate Court results in eviction of the Applicant without allotting him equivalent carpet area in the new building as mandated under clause (d) of Section 16(6) of the Rent Act. The decree of eviction is therefore clearly unsustainable.

33. Though I have arrived at a conclusion that decree of eviction passed by the Trial Court is unsustainable, I do not wish to drive the parties to another round of litigation by permitting Plaintiffs to institute a fresh suit under clause (i) of

Section 16(1) of the Rent Act. If indeed Plaintiffs desire to demolish House bearing No.2481 and to construct a new building in place thereof, it shall be open for Plaintiffs to do so after entering into suitable agreement with Applicant for providing him equivalent carpet area in the newly constructed building. If Plaintiffs show willingness to execute such agreement with Applicant, the Applicant shall vacate the suit premises and deliver possession thereof to the Plaintiffs immediately upon execution of such agreement for the purpose of enabling the Plaintiffs to construct a new building by demolishing house No.2481.

34. I accordingly proceed to pass following Order :-

i) Judgment and decree dated 31 March 2022 passed by the Civil Judge, Junior Division, Ratnagiri in Regular Civil Suit No.290 of 2014 as well as Judgment and Decree dated 19 April 2023 passed by the Principal District Judge, Ratnagiri in Regular Civil Appeal No.19 of 2022 are set aside and Plaintiffs' suit is dismissed with costs.

ii) It shall however be open for Plaintiffs to execute an agreement with the Applicant for allotment of carpet area equivalent to the area currently in his possession in the form of suit premises, in the newly constructed building by demolishing Municipal House No.2481. If Plaintiffs execute such an agreement and undertake to allot the carpet area equivalent to the area in possession of the Applicant in the newly constructed building, the Applicant shall deliver possession of suit premises to the Plaintiffs immediately upon execution of such agreement. Immediately upon completion of new building, Plaintiff shall handover possession of premises in new building in favour of the Applicant.

35. With the above directions, the Civil Revision Application is allowed with costs. Decree be drawn up accordingly.