

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.495 OF 2018

Jamnadas Ratansi (since deceased)
through Malti Dhirshi Bhatia and others ... Applicants
Vs.
Anilbhai Dwarkadas Bhatia (since deceased)
through Samir Bhatia and others ... Respondents

Mr. Prasad Dani, Senior Advocate a/w. Mr. Nikhil Sakhardande,
Mr.Punit Damodar and Ms Nikita Vardhan i/b. Kanga & Company for
Applicants.

Mr. G. S. Godbole, Senior Advocate a/w. Ms Jai Kanade i/b. Dastur
Kambli & Associates for Respondents No.1 and 2.

CORAM : R. G. KETKAR, J.
DATE : APRIL 8, 2019

P.C. :

Heard Mr. Dani, learned Senior Counsel for the applicants and
Mr. Godbole, learned Senior Counsel for the respondents No.1 and 2 at
length.

2. By this Application under Section 115 of the Code of Civil
Procedure, 1908 (for short 'C.P.C.'), applicants have challenged the
judgment and decree dated 04.05.2018 passed by the Appellate Bench of
the Small Causes Court, Mumbai in (A-1) Appeal No.451 of 2010. By
that order, the Appellate Court allowed the appeal preferred by the
respondents No.1 and 2 herein and set aside the judgment and decree
dated 06.09.2010 passed by the learned trial Judge in R.A.E.Suit
No.780/2107 of 1991. The Appellate Court directed the applicants, who
are defendants No.1-A to 1-D to handover vacant and peaceful
possession of flat No.3 on the 6th floor of building known as 'Avanti' in
Avanti Co-operative Housing Society Limited, 89, Netaji Subhash Road,

Mumbai 400 002 (for short 'suit premises') to the plaintiffs.

3. In support of this Application, Mr. Dani submitted that by order dated 06.09.2010, the learned trial Judge partly decreed the Suit and directed the defendants to handover vacant and peaceful possession of the suit premises and garage No.9 to the plaintiffs. The Suit in respect of flat No.3 was dismissed. Aggrieved by this order, respondents No.1 and 2 preferred Appeal No.451 of 2010 in respect of the suit premises. Appeal No.108 of 2010 was preferred by the applicants in respect of garage No.9. By the impugned order, the Appellate Court has allowed the appeal in respect of the suit premises.

4. Mr. Dani submitted that the learned trial Judge passed order on 09.03.2009 as regards admissibility of documents produced by the plaintiffs. That order records that Articles X-1 to X-8 were marked as Articles on 24.08.2006. By order dated 09.03.2009, the learned trial Judge marked those documents as exhibits subject to the objections of the defendants. The objections were to be considered at the time of final hearing of the Suit. It is common ground between the parties that the said order was not challenged by either plaintiffs or defendants and documents marked as 'X-1 to X-8' were marked as exhibits-61 to 68 subject to objections of the defendants. The learned trial Judge passed order of admissibility of the documents filed by P.W.2 on 10.11.2009. P.W.2 produced 5 documents along with the list of documents exhibit-58. These 5 documents were marked as exhibits-69 to 72, 73/1 and 72/2 respectively subject to objections of the defendants. He submitted that however, the learned trial Judge did not decide the objections while deciding the Suit finally. Even the Appellate Court, while reversing the trial Court's decree, has not dealt with the objections raised by the defendants to exhibits-69 to 72, 73/1 and 72/2.

5. Mr. Dani has invited my attention to the impugned order and submitted that the judgment of the Appellate Court is far from satisfactory. The Appellate Court has neither reproduced nor dealt with the various contentions advanced before it. The Appellate Court, after considering the pleadings of the parties and evidence adduced by the parties, allowed the Appeal. He submitted that basically, plaintiffs did not examine the person who had sent emails. The plaintiffs have not proved the contents of the documents at exhibits-69 to 72, 73/1 and 72/2, and without deciding the objections, both by the trial Court as also by the Appellate Court, the orders are passed. He further submitted that the requirement pleaded by the plaintiff is of son Samir, who has acquired citizenship of U.S.A. He further submitted that in fact, Samir has purchased two premises, one at 1600, Beacon Street and another at Gabilan Road in U.S.A.

6. On the other hand, Mr. Godbole supported the impugned order. He has taken me through the impugned order and submitted that the Appellate court, after re-appreciating the entire evidence on record, has decreed the Suit under Section 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Act'). He has taken me through paragraphs 62 to 75. He further submitted that from paragraph 76 onwards, the Appellate Court has dealt with the issue of comparative hardship and held that defendant admitted in cross-examination that he has not searched for alternate premises since filing of the Suit. He, therefore, submitted that no case is made out for interfering with the impugned order.

7. I have considered the rival submissions advanced by the learned Senior Counsel appearing for the parties. I have also perused the material on record. The matter was heard at length on 03.04.2019 when the arguments were concluded and matter was adjourned till today for

passing order. During the course of hearing, suggestion was given to Mr.Godbole that Court is inclined to admit the C.R.A. or if the respondents No.1 and 2 are agreeable, it will consider setting aside orders passed by the Courts below thereby remanding the matter to the trial Court or in the alternative, setting aside the impugned order and remanding the matter to the Appellate Court.

8. Today, Ms Kanade appears and submits that instead of setting aside the orders, the C.R.A. may be kept pending by invoking powers under Order XLI, Rule 25 of C.P.C. In other words, respondents No.1 and 2 are not agreeable for setting aside order passed either by the trial Court or by the Appellate Court or by the Courts below.

9. As basically the learned trial Judge did not deal with the objections raised by the plaintiffs at the time of final hearing of the Suit as also the Appellate Court also did not deal with objections while reversing the trial Court's order, there is, prima facie, a serious infirmity in the impugned order. That apart, the other serious infirmity in the impugned order is that the Appellate Court has neither reproduced nor dealt with the various contentions agitated by the parties before it. In view thereof, a fairly arguable case is made out. Hence, **Rule.** Mr.Godbole waives service for respondents No.1 and 2. Call for R & P. Rule on interim relief, returnable on 17.06.2019. In the meantime, there shall be ad-interim order in terms of prayer clause (b). On the next date of hearing, the Court will consider fixing reasonable compensation.

(R. G. KETKAR, J.)