



Swapnil

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 480 OF 2019**

Irani Gustad Khodadad. ...Applicant

Vs.

Laxmidas Morarji (since Deceased)

Thr Lrs. and Ors. ...Respondents

Mr. Angel Carneiro a/w. Mr. Smith Barboz i/b. Mulla and Mulla and Craigie Blunt and Caroe for the applicant.

Mr. Shravan M. Vyas a/w. Mr. Vivek S. Vyas for respondent nos. 1(b) and 1(b)(ii), 2b(i) and 2(b)(ii) and 1c.

CORAM : GAURI GODSE, J.

DATE : 2nd SEPTEMBER 2026

ORDER :

1. This civil revision application is preferred by original defendant no.2 to challenge the judgment and decree passed by the appeal bench of the Small Causes Court. The decree was passed on the ground that defendant no.2 is illegally occupying the premises and on the ground of illegal subletting. The appeal court has recorded the finding that the suit premises was illegally sublet in the year 1995 to defendant no.2.

2. Learned counsel for the applicant submits that

defendant no.2 was occupying the suit premises under leave and licensee agreement dated 27th December 1968 executed by the original tenant, i.e. defendant no.1. He submits that the document is produced on record and admitted in evidence which is a sufficient proof that defendant no.2 is occupying the suit premises prior to 1st February 1973 and therefore is entitled to the protection in view of Section 15A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ("said Act").

3. Learned counsel for the applicant relies upon the trial court's findings on the consent decree produced on record at Exhibit '23'. He submits that the document at Exhibit '23' supports defendant no.2's contention that he is the tenant of the suit premises. He submits that Exhibit '23' is a consent decree dated 27th November 1996 in a declaratory suit filed by defendant no.2 against defendant no.1. He submits that by consent, defendant no.2 is declared as a tenant of the suit premises. He submits that an important piece of evidence which supports defendant no.2's case is not even considered by the appellate court. Apart from the consent decree at Exhibit '23', defendant no.2 has relied upon the rent receipts

and electricity bills and various correspondence since 1968 to support the contention that defendant no.2 is occupying the suit premises prior to 1st February 1973 and thus cannot be termed as an illegal sub-tenant. He submits that the appeal bench of the Small Causes Court has ignored the important evidence which supports defendant no.2's case that he is occupying the suit premises much prior to 1st February 1973, which protects his occupation as a protected licensee. Learned counsel for the applicant submits that the civil revision application would therefore warrant interference.

4. I have perused the papers of the civil revision application. The applicant, i.e. defendant no.2 who is alleged to be a sub-tenant has pleaded in his written statement filed on 9th December 1999 that his source of possession of the suit premises is a leave and license agreement dated 26th December 1968 executed by defendant no.1. Though learned counsel for the applicant has relied upon the consent decree dated 27th November 1996, he is unable to point out any pleadings in his written statement that defendant no.2 was declared as a tenant which support his case that he is occupying the suit premises prior to 1st February 1973.

5. I have perused the document produced at Exhibit '23'. It is an order passed by consent in a suit *inter se* between the defendants. Except for the statement in the first paragraph of the consent terms declaring him as the tenant, there is no adjudication of his tenancy. The landlord, who is the owner, i.e. the present plaintiff, is not a party to the said suit. Admittedly, defendant no.1 is the original tenant. Hence, there is no question of any declaration by consent that defendant no.2 is the tenant of the suit premises. Hence, the document at Exhibit '23' is irrelevant to decide whether defendant no.2 is entitled to any protection under Section 15A of the said Act.

6. The document pleaded by defendant no.2 is the leave and license agreement dated 27th December 1968. The appeal court has exhaustively discussed the terms and conditions of the said document and the oral evidence. In paragraphs 39 and 40 of the impugned judgment, the appeal court referred to the admissions by defendant no.2 that, in 1966, he had passed the 10th standard examination and, therefore, was not a major in 1968 when the alleged leave and license document was executed. Defendant no.2 has

further admitted in his cross-examination that in 1966, when he was 16 years old, he had left the premises of his parents. However, he has not assigned any further reasons to support the said contention. Defendant no.2 has not produced any document to show that he was major when the document of 1968 was allegedly executed.

7. The consent decree relied upon by defendant no.2 is in a suit filed during the pendency of the present suit, which was filed sometime in 1970. The written statement was filed in 1999. There is no valid explanation on behalf of defendant no.2 for not specifically pleading the particulars of the consent decree relied upon by defendant no.2. Even otherwise, the said consent decree, passed during the pendency of the present suit, by suppressing the pendency of the suit and without making the present plaintiff a party to the suit, would not assist defendant no.2 to claim protection under Section 15A of the said Act.

8. The attempt by defendant no.2 to produce the document at Exhibit '23' by filing a collusive suit cannot be considered an important aspect for interference with the findings of fact recorded by the appellate court, as it

exhaustively discussed the 1968 document and the oral evidence. Any documentary evidence produced without any support in the pleadings would not be of any relevance. The written statement of defendant no.2 specifically pleads the document of 1968, which is discussed by the appellate court.

9. The appellate court also referred to the documents with which defendant no.2 was confronted during his cross-examination, including the voters list and the divorce petition between defendant no.2 and his wife. With reference to the said documents and the confrontation during cross-examination, the appellate court held that defendant no.2's address was different from the suit premises. Hence, in view of the admissions given by defendant no.2, the appeal court has rightly arrived at the conclusion that defendant no.2 failed to prove that he was occupying the suit premises prior to 1st February 1973. Hence, defendant no.2 is rightly held not entitled to any protection under Section 15A of the said Act.

10. By amending the civil revision application, defendant no.2 has also challenged the order passed by the appeal bench on 3rd September 2019 recording findings that plaintiff

no. 1A to 1C are the heirs and legal representatives of original plaintiff no.1. Learned counsel for the applicant submits that though there is a probate in favour of plaintiff nos. 1A to 1C, they are not the legal heirs of deceased plaintiff no.1.

11. I have perused the order dated 3rd September 2019. Learned counsel for the plaintiff submits that the prayer regarding bringing on record the names of plaintiff nos.1A to 1C was never objected to by defendant no. 2, and the order on the Marji application was passed only because of the objection raised by defendant no.1. He relies upon paragraph 22 of the order dated 3rd September 2019.

12. I have perused the order. Learned counsel for the plaintiff is right in submitting that defendant no.2 has never challenged the status of plaintiff nos.1A to 1C. Even otherwise, in view of the probate granted in favour of plaintiff nos. 1A to 1C. I see no ground to raise objection to their status.

13. Learned counsel for the respondent (plaintiff), on instructions, submits that the suit premises are kept vacant under the lock and key of defendant no.2. He, therefore,

submits that the attempt on the part of defendant no.2 in filing this civil revision application is only to defeat the decree passed in favour of the landlord in a suit of 1970. Defendant no. 2, who is present in court, does not dispute the landlord's statement that the suit premises are kept vacant. Learned counsel for defendant no.2, on instructions, submits that defendant no.2 intends to reside in the suit premises and could not reside as it requires repairs.

14. It is unfortunate that despite filing a suit for eviction in 1970 and the appellate court's decree dated 3rd May 2019, the landlord is unable to get the fruits of the decree, and the suit premises remain vacant under the lock and key of defendant no.2.

15. I do not find any jurisdictional or any other manifest error in the reasons recorded in the impugned judgment. Hence, no interference is called for in the impugned judgment in exercise of the jurisdiction under Section 115 of the Civil Procedure Code, 1908. The civil revision application is devoid of any merit. In view of the facts and circumstances of the case as discussed above, the applicant is liable to pay costs to the respondent, i.e. the heirs and legal

representatives of the original plaintiff.

16. In view of the facts and circumstances discussed above, the cost is quantified at Rs. 2,00,000/-. The cost shall be paid within two weeks from the date of uploading this order on the official website. If the cost is not paid, the respondents (original plaintiffs) would be entitled to recover the same while executing the eviction decree.

17. The civil revision application is dismissed.

18. At this stage, learned counsel for the applicant seeks extension of the interim protection granted by this court on 8th July 2019. The protection granted vide order dated 8th July 2019 shall continue to operate till expiry of six weeks from the date of uploading this order on the official website, subject to applicant filing undertaking before this court stating that if favourable order is not passed by the Apex Court, the applicant shall handover the vacant and peaceful possession of the suit premises to the respondents on expiry of the protection granted by this order.

19. The affidavit-cum-undertaking shall state that the suit premises is in possession of only the applicant and no other

third party is occupying the same and that arrears, if any, shall be deposited within four weeks from today. The undertaking shall further state that no third-party rights would be created and possession shall not be parted in favour of any third party. Such an affidavit-cum-undertaking shall be filed within two weeks.

20. It is clarified that if such an undertaking is not filed or there is any breach of the undertaking, the protection granted by this order shall stand vacated without further reference to the court.

21. The amount deposited by the applicant in this court shall be paid to respondent nos. 1A to 1C with accrued interest, if any.

[GAURI GODSE, J.]