

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.5 OF 2014

Balmukund Ratanlal Ladda,
Age-60 years, Occu:Business,
R/o-Prop. Ramesh Trader,
Kirana Shop, New Mondha,
Beed, District-Beed.

...APPLICANT
(Orig. Appellant)

VERSUS

Sitaram s/o Dhondiram Harkut,
Age-65 years, Occu:Agri. & Business,
R/o-Madalmohi, Tq-Georai,
District-Beed.

...RESPONDENT
(Orig. Plaintiff)

...

Mr. V.B. Mantri Advocate for Applicant.
Mr. G.K. Naik Thigle for Respondent.

...

CORAM: A.I.S. CHEEMA, J.

DATE OF RESERVING JUDGMENT : 16TH FEBRUARY, 2015.

DATE OF PRONOUNCING JUDGMENT: 5TH MARCH, 2015.

JUDGMENT :

1. This Revision Application has been filed
by the Applicant - Original Defendant against

dismissal of his Regular Civil Appeal No.180 of 2006 by District Judge-3, Beed vide Judgment dated 19th September 2013. The Appeal was filed by the Applicant - original Defendant (hereafter referred as "Defendant") against the decree of recovery of rent and possession in Regular Civil Suit No.168 of 2002 passed by Second Joint Civil Judge, Senior Division, Beed.

2. The Revision Application has been finally heard with consent of Counsel for both sides.

3. In brief, the dispute is as follows:

(A). The Respondent - original Plaintiff (hereafter referred as "Plaintiff") filed Regular Civil Suit No.168 of 2002 claiming that the property is lease hold plot situated at Market Yard of Agricultural Produce Market Committee, New Mondha, Beed. On this Plot No.24, there is tin shed constructed of 42 tin sheets. Plaintiff is

permanent lessee of the plot. In the year 1985 the parties agreed to enter into a partnership business in the suit shop premises but the same could not be finalized. Defendant, however, was allowed to continue in the said shop on payment of Rs.500/- per month for use and occupation. The term agreed was of two years. Still Defendant did not vacate the premises as agreed. Earlier Plaintiff filed Special Civil Suit No.22 of 1991 for possession and rent but it was decreed only for rent on 26th April 1995. In the Suit it was held that the Defendant is tenant at Rs.500/- per month rent. Defendant remained in arrears and another Regular Civil Suit No.56 of 1995 was filed, which was decreed on 31st January 1997. Yet again Defendant remained in arrears and Regular Civil Suit No.655 of 2000 was filed for rent and possession. The Suit was decreed for rent but possession was refused as it was found that the notice was defective. Again the Defendant remained in arrears and the notice dated 31st August 2001

was issued by the Plaintiff calling upon Defendant to pay the arrears of rent up-to 31st August 2001 and to vacate the premises by 1st October 2001. The present Suit was filed claiming cause of action to be of 1st October 2001. As the arrears were not paid and premises were not vacated, the Suit came to be filed on 28th June 2002.

(B). In the Suit, Plaintiff made further claim that the Defendant unauthorizedly and illegally made alterations and additions to the construction and the tenancy had been terminated for such illegal acts. In the Suit, Plaintiff claimed that there were arrears of rent with effect from 1st June 1999 till 30th June 2002. Although the arrears were more, still the claim was being limited to 36 months preceding the Suit and Rs.18,000/- were demanded with interest.

(C). The Defendant filed Written Statement in the Suit claiming that the tin shed was erected

by him as the earlier was washed away in the floods in the year 1989. Defendant claimed that he had offered rent but Plaintiff had avoided to receive the same. He claimed that no material alteration was made and only the height of the tin structure had been raised after giving idea to the Plaintiff and that the same was done with his consent. Against the earlier dismissal of Regular civil Suit No.655 of 2000 regarding claim of possession, the Appeal was filed by the Plaintiff which was pending and thus present Suit was not tenable.

4. The trial Court framed issues and the parties brought on record the necessary evidence. The trial Court found that although Plaintiff had filed Appeal in earlier Regular Civil Suit No.655 of 2000, still the present Suit was tenable as it related to recurring cause of action. Trial Court also found that the Defendant was willful defaulter in payment of rent and that the tenancy

of the Defendant was duly terminated and Defendant was in illegal occupation since 1st October 2001. The arrears of rent were also found to have been established and it was held that the Plaintiff was entitled to even interest on the arrears of rent as well as possession of the suit property. The trial Court supported the findings with reasons.

5. In the Appeal the Appellate Court considered the rival cases put up by the parties. The Appellate Court also found that although the Appeal in the earlier Regular Civil Suit No.655 of 2000 refusing possession was pending, still the present Suit related to recovery of arrears of rent of different period and fresh Suit had different subject matter. The District Court discussed that in earlier Special Civil Suit No.22 of 1991 the possession was declined as applicability of Hyderabad Tenancy and Rent Control Act was noticed. It found that in Regular Civil Suit No.655 of 2000 possession was declined

on the ground that the tenancy was not legally terminated and the notice was not signed by the party or counsel. For such reasons, the Appellate Court also found that the fresh Suit was tenable irrespective of the pendency of the Appeal in Regular Civil Suit No.655 of 2000. The Appellate Court referred to the notice issued in the present matter vide Exhibit 35 and the refused postal envelope Exhibit 36 with the endorsement of refusal. The Appellate Court took note of Section 27 of the General Clauses Act and found that presumption of service in favour of the Plaintiff could be drawn and Defendant had failed to rebut the presumption. The Appellate Court held that the Plaintiff had proved service of notice under Section 106 of Transfer of Property Act, 1882. It was held that trial Court has rightly held that the tenancy of the Defendant had been terminated vide Exhibit 35 under Section 106 of Transfer of Property Act and that the Defendant was in an unauthorized occupation. The Appellate Court also

held that the Defendant was willful defaulter in payment of the rent which was rightly found by the trial Court. The arrears of rent with interest awarded was also upheld. The Appeal was accordingly dismissed.

6. The present Revision raises grounds that as one Appeal was pending in Regular Civil Suit No.655 of 2000, present Suit was not tenable. The Plaintiff had failed to prove allegations of alteration in the suit premises. Sufficient evidence on this count was not led. It was wrongly held that the Defendant refused notice. It should have been appreciated that the Defendant made attempt to make payment of rent. For such reasons, the present Revision claims that the impugned Judgment of the District Court needs to be set aside.

7. I have heard learned counsel for both sides. Learned counsel for the Applicant submitted

new ground at the time of arguments that when the notice was sent terminating tenancy with effect from 1st October 2001, in the Suit rent was claimed till the end of June 2002 and thus, according to the counsel, the termination of tenancy was waived. It was argued that earlier Appeal claiming possession was pending and so the present Suit could not have been filed. It has also been argued that the Suit decided by the Civil Judge Senior Division was wrong as he did not have jurisdiction. According to the counsel under Section 33 of the Maharashtra Rent Act, 1999, the jurisdiction was with the Civil Judge, Junior Division, and Civil Judge, Senior Division could not have tried the Suit.

8. Per contra, learned counsel for Respondent submitted that the tenancy was duly terminated as the Defendant was persistently in arrears of rent. On earlier three occasions, the rent was paid only when the Suits were filed and

even thereafter only when coercive execution was resorted to. Counsel submitted that even in the present matter after the sending of notice or even after filing of Suit, Defendant did not pay any rent and thus he was a defaulter and the decree passed by the trial Court and maintained by the District Court cannot be faulted with. According to the counsel, when the Plaintiff sent notice demanding arrears of rent and terminated the tenancy for being defaulter, only because till filing of Suit the amount claimed is styled as rent, does not make any difference and it cannot be said that the termination of tenancy is waived.

9. The Point for Consideration is - whether the impugned Judgment of the District Court is illegal or suffers from material irregularity?

10. Going through the material available on record, I find that both the Courts below have concurrently found that the Defendant was in

arrears of rent as claimed by the Plaintiff and also found that the notice was refused by the Defendant. It does not appear that after the notice or even after filing of the Suit, the Defendant deposited any arrears of rent or rent during pendency of the Suit. Trial Court discussed provisions of Section 15 of Maharashtra Rent Control Act, 1999 and found the Defendant to be defaulter. District Judge has concurred. No exception can be taken to the findings of the Courts below that the Defendant is defaulter and is liable to be evicted.

11. There is no substance in the argument that if the notice had been sent terminating tenancy and seeking possession by 1st October 2001, the subsequent rent demanded till filing of the Suit till June 2002 would amount to waiver of the termination of tenancy. Trial Court considered matter under Maharashtra Rent Control Act and finding Section 15 and 16(1)(b) attracted, decreed

the Suit. Thus, there is no force in the submission.

12. Although in the Revision Application ground is raised that there was no sufficient evidence regarding alteration of suit premises, it can be seen from the Judgment of the trial Court that it found that the tenant had carried out alteration without consent of the landlord and thus Section 16(1)(b) of the Maharashtra Rent Control Act, 1999 had been violated. If the Suit is considered, it referred to the suit shop as tin shed and in the written statement Defendant himself stated in Para 5 that he had increased the height of the tin structure. Defendant claimed that regarding this, idea had been given to the Plaintiff. Looking to the pleadings themselves, the finding of the trial Court that written consent of the landlord was not taken, cannot be faulted with.

13. The argument of the learned counsel for Applicant that under Section 33(1)(c) of the Maharashtra Rent Control Act, 1999 jurisdiction will vest with the Civil Judge, Senior Division only if the Court of Civil Judge, Junior Division is not there, needs to be discarded for reasons recorded in the Judgment of this Court where Section 33 of Maharashtra Rent Act was compared with earlier Section 28 of Bombay Rent Act, in the matter of **Sukhlal Bhivsan Dhobi (Suryawanshi) (deceased) through LRs. vs. Vinayak Sadashiv Sangale and another, reported in 2014(3) Mh. L.J., 939** to discard similar argument. In Para 10 of the Judgment, it was observed:-

"10. Keeping in view the Judgment of the Division Bench in the matter of **Smt. Savitribai (AIR 1981 Bombay Page 430)**, which took support also from the matter of **Ranchhodlal Vallabhdas (A.I.R. 1956 Bombay, Page 481 [Vol.43, C.187 July])**, there is no manner of doubt that where there is Court established of Civil Judge, (Senior Division), as well as Joint Civil Judge, (Junior Division), and the institution is in the Court of Civil Judge, (Senior Division), the Civil

Judge, (Senior Division), Joint Civil Judge, (Senior Division) (if such Judge is also there), as well as Joint Civil Judge, (Junior Division), all these Courts have jurisdiction to decide the matter. On institution of the Rent matter in the Court of Civil Judge (Senior Division) he can try it himself, or make it over to Joint Civil Judge (Senior Division) or Joint Civil Judge (Junior Division). It is clear from the Judgments referred, which have interpreted Section 28 of the Bombay Rent Act, that where no Court of Civil Judge, (Junior Division) is there, the Court of Civil Judge, (Senior Division), which has jurisdiction to entertain and try the suit, can try the same and it could be tried by all the Joint Civil Judges, (Senior Division) or by Joint Civil Judge, (Junior Division) to whom the suit may be referred to for disposal by the Civil Judge, (Senior Division) or by the District Judge under Section 23 of the Civil Courts Act or by way of transfer under Section 24 of C.P.C. At (taluka) places where there is Court of Civil Judge (Junior Division) and Joint Civil Judge (Junior Division) and institution is in the Court of Civil Judge (Junior Division), such matters on institution can be tried by Civil Judge (Junior Division) as well as Joint Civil Judge (Junior Division) to whom the matter is

made over. In view of this, under Section 31 of the Maharashtra (Error - Read 'Bombay') Rent Act, Courts specified in Sections 28 and 29 as interpreted in the Judgments of the Division Bench and Full Bench, referred above, shall follow the prescribed procedure in trying and hearing suits, proceedings, applications and appeals and in executing orders made by them."

. Thus, argument questioning jurisdiction stands discarded.

14. Thus, I do not find that there is anything illegal in the impugned Judgment of the District Court. No material irregularity is pointed out. There is no substance in the Revision Application.

15. The Revision Application is dismissed with costs.

[A.I.S. CHEEMA, J.]