

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION (STAMP) NO.998 OF 2014
WITH
CIVIL APPLICATION (STAMP) NO.1016 OF 2014
WITH
CIVIL APPLICATION (STAMP) NO.18441 OF 2015

Suresh Chand R. Yadav.] ... Applicant

Versus

Asharam M. Jain (Since Deceased)]
 Anant Asharam Jain and Anr.] ... Respondents

Mr. Nilesh R. Pandey for Applicant.

Mr. H. S. Shreepadmurthy a/w Mrs. Nandini Joshi & Mr. Abhishek Patil i/b Narsimhan Raja for Respondent.

CORAM :- M. S. SONAK, J.
DATE :- OCTOBER 13, 2015

P. C. :-

1. Consequent upon condonation of delay, the Civil Revision Application was heard for admission.

2. Mr. Nilesh Pandey, learned Counsel for applicant, submitted that the applicant had engaged Advocate both before the Trial Court as well as the Appeal Court. However, the said Advocate did not advise the applicant about the steps to be taken and consequently, the applicant could not lead evidence before the Trial

Court or make proper submission before the Appeal Court. Mr. Pandey submitted that there is no material on record which will sustain the finding of sub-letting. Similarly, there is no material on record to establish that the statutory notices had been served upon the applicant. In the absence of service of statutory notices, no decree of eviction on the ground of alleged default in the payment of rent could ever have been made. Accordingly, Mr. Pandey submitted that the impugned eviction decree dated 31/08/2012 made by the Appeal Court is in excess of jurisdiction and the same be interfered with.

3. Mr. H. S. Shreepadmurthy, learned Counsel for landlord, submitted that there are concurrent findings of fact so far as the issue of sub-letting is concerned. Insofar as the ground of default in payment of rent is concerned, the Appeal Court, on the basis of the material on record, has rightly concluded that the statutory notices were duly served upon the applicant. In any case, since the applicant has failed to lead any evidence before the Trial Court, despite afford of opportunities in that regard, there is no question of transferring the blame upon the applicant's Advocate and on the said basis affording applicant yet another opportunity in the matter. Mr. Shreepadmurthy pointed out that the eviction proceedings had been instituted in the year 1999 and the ground that the applicant had been sub-letting the commercial premises to others, has been established. For all these reasons, Mr. Shreepadmurthy submitted that this is not a case where the impugned decree warrants interference nor is this the case where any indulgence is required to be shown to the applicant.

4. Having heard the learned Counsel for the parties and perused the material on record, there is no case made out to interfere with the eviction decree. In this case, it is not the case of the applicant that he was not served with the summons or that any opportunity for leading of evidence was unduly denied to him by the Trial Court. Despite full opportunity, the applicant failed to either examine himself or lead any evidence in respect of his case. It is not sufficient to merely file a written statement and raise defences. It is also necessary to make good those defences by leading cogent evidence.

5. The Appeal Court, in the context of service of notice, has rightly appreciated the material on record. The Appeal Court has rightly raised the presumption which normally arises in such matters. Since the applicant failed to lead any evidence whatsoever, the Appeal Court has rightly disbelieved the applicant's contention about the alleged non-service of statutory notices. The ground that there were defaults in payment in rent and that despite the receipt of statutory notices, no remedial action was taken, has been established. The findings of fact recorded by the Appeal Court is amply borne from the material on record and there is no perversity involved.

6. Similarly, on the issue of sub-letting, again, the Appeal Court has properly appreciated the material on record and returned findings of fact. Again, the circumstance that the applicant led no evidence whatsoever before the Trial Court, has been held against the

applicant. The evidence led by and on behalf of the landlord has remained un rebutted and consequently the Appeal Court was right in making the eviction decree.

7. The learned Counsel for applicant has thereafter urged that the suit premises have been declared as a slum area and therefore in view of the provisions of Section 22 of The Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, no decree of eviction could have been made in respect of the suit premises. The submission is totally misconceived. It was precisely the contention raised by the applicant before the Trial Court by means of Marji Application No.871 of 2012 to seek a stay upon the execution of the decree; but the said application was dismissed on 22/08/2012. Thereafter, the applicant instituted Writ Petition No.9637 of 2013 before this Court and the same was also withdrawn. It is therefore impermissible for the applicant to keep on raising such issues, without there being any factual foundation for the same.

8. The learned Counsel for applicant tried to urge that the respondents are not the landlords in respect of the suit premises and submitted that a specific contention in this regard had been raised in the written statement. On this basis, the learned Counsel for applicant contended that the eviction decree is required to be interfered with. The contentions cannot obviously be accepted at this stage. It is not sufficient to merely deny the title in the written statement. Such denial, if *bona fide*, has to be made good or at least

established to be *bona fide*. In this case, the applicant did not even lead any evidence before the Trial Court. Therefore, this can be no ground to interfere with the decree made by the Appeal Court.

9. There is no error of jurisdiction. This is not a case where the Appeal Court has either failed to exercise the jurisdiction vested in it or exercised its jurisdiction which was not vested in it. This is also not a case of material irregularity. The findings of fact recorded by the fact finding Court are not vitiated by perversity. The submissions about improper or incompetent legal representation also cannot be accepted. The applicant has taken out various proceedings in order to avoid the eviction decree and thereafter the execution thereof. Even in this Court, the Civil Revision Application came to be instituted after delay of 1 year and 15 days, which delay has been condoned. The roznama and the farad sheet indicate that neither the applicant nor his Advocate remained present on several occasions to take steps to pursue the matter. Perhaps, on account of pendency of this Civil Revision Application, the execution of the eviction decree was being resisted. Ultimately, this Civil Revision Application came to be dismissed for default. However, upon cause being shown regards the absence on the date when the Civil Revision Application was dismissed, the dismissal order was recalled. Upon consideration of the overall conduct of the applicant, it is clear that such applicant is not entitled to indulgence. Grant of indulgence would also mean that respondent-landlord is denied the fruits of the eviction decree in pursuance of a suit which was instituted way back in the year 1999.

10. For all the aforesaid reasons, this Civil Revision Application is dismissed. There shall be no order as to costs.

11. The learned Counsel for applicant makes a statement that the applicant in possession of the suit premises. Accordingly, pending execution proceedings, the applicant is restrained from parting with possession or creating any third party rights in respect of the suit premises.

12. With the disposal of Civil Revision Application as aforesaid, Civil Applications do not survive and disposed of as such.

(M. S. SONAK, J.)