

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 260 OF 2014

Hindustan Motor Training School & Ors. ..Petitioners/Applicants
vs.
Madhavlal N. Pittie, Esq., ..Respondent

Mr. K. Kandekar for Applicants.
Mr. B. N. Shukla for Respondent.

CORAM : M. S. SONAK, J.
DATE : 13 JULY 2015

P.C. :-

1] This revision application is directed against the judgments and decrees dated 17 March 2007 and 4 September 2013 made by the trial and appeal Courts ordering eviction of the applicants on the ground that the suit premises which were let out to them for the purposes of motor training school have not been used without reasonable cause or for the purpose for which they were let out for a continuous period of six months immediately preceding the date of the suit.

2] The two Courts, have concurrently recorded findings of fact on the ground of non user for continuous period of six months without any reasonable cause as contemplated by section 13(1)(k) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (said Act).

3] The learned counsel who appears for the applicants submitted that the findings of fact recorded by the two Courts are vitiated by perversity, in as much as the evidence led by and on behalf of the defendant no. 2 that the suit premises were in fact being used for the purposes of motor training school as well as for the purpose of garage / repairs of motor vehicles, has not at all been considered by the trial Court and the appeal Court. The learned counsel for the applicants Mr. Kandekar submitted that the impugned orders are in excess of jurisdiction, or in any case the two Courts, in exercise of their jurisdiction, have acted illegally and with material irregularity.

4] Having perused the material on record, there is no case made out to interfere with the concurrent findings of fact recorded by the trial Court and the appeal Court. The findings of fact are very much borne by the material on record and there is no perversity involved. In the exercise of revisional jurisdiction, this Court, does not act as an appellate authority. Accordingly, unless it is demonstrated that the findings of fact are vitiated by perversity, non application of mind or unreasonableness, there is no question of exercising revisional jurisdiction under section 115 of the CPC.

5] The material on record indicates that the applicants i.e. Hindustan Motor Training School virtually exists only on paper, but has ceased to carry on any business from out of the suit premises. The record indicates that the suit premises were let out to Hindustan Motor Training School, which was a partnership firm for the purposes of motor training school business. The firm had duly obtained permissions and licences from various authorities including authorities under the Shops and Establishment Act, for the purposes of undertaking any other business. However, from 1992 there is no evidence of any renewals of such permissions. The composition of the firm has also undergone changes, on account of demise of the original partners. In fact, there was not even any serious cross-examination to the deponents on behalf of the landlord, when, said deponents made categorical statement regards stoppage of business from suit premises.

6] Secondly, apart from Mr. Vijay Pinto, the defendant no. 2, who was one of the partners of Hindustan Motor Training School, none of the other defendants including in particular the defendant nos. 5 and 6 either bothered to file any written statement or depose in the matter. Mr. Vijay Pinto who deposed in the matter asserted that according to him the business of Hindustan Motor Training School is still in existence. However, apart from such assertion, Mr. Pinto

was unable to substantiate the same. Mr. Pinto admitted that the last income tax returns filed by Hindustan Motor Training School was in the year 1985. Mr. Pinto admitted that there is no electricity in the suit premises. Mr. Pinto admitted that Hindustan Motor Training School does not have any car or vehicles upon which training can be imparted. Mr. Pinto admitted there is no telephone connection in the suit premises since the year 1989. All this evidence, is sufficient to establish that the ground as contemplated by section 13(1)(k) of the said Act has been made out.

7] Apart from the aforesaid, the trial Court and the appeal Court has considered the material on record in its proper perspective and on the said basis recorded finding of fact that there is no user of the suit premises for a continuous period of more than six months immediately preceding the date of the suit. As noted earlier, there is no perversity in the record of such findings of fact. Accordingly, no case is made out to interfere with the impugned orders. This CRA is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)