

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1292 OF 2015

Sharad R. Khanna	...Petitioner
vs.	
Mangala Hospitality	
and Another	...Respondents

Mr. Ashok K. Goel, for Petitioner.
Colonel Abhijit Kadam (Retd.), for Respondent
No.1.

CORAM : K.R. SHRIRAM, J.

DATE : FEBRUARY 16, 2015

P.C.

. This petition is filed against the order dated 3rd December, 2014 passed by the trial Court rejecting the application of the petitioner for decree on admission under Order XII Rule 6 of the Code of Civil Procedure, 1908.

2. The petitioner herein had filed RAD Suit No. 1190 of 2007 to be declared as a tenant of the suit premises. During the pendency of the suit,

respondent No. 1 filed RAE Suit No. 554 of 2010 under the provisions of Maharashtra Rent Control Act, 1999 against the petitioner and the occupier of the suit premises seeking possession of the suit premises on the ground that the petitioner had also sublet the suit premises.

3. Before filing RAE Suit No. 554 of 2010, the respondent No. 1 had also filed written statement in RAD Suit No. 1190 of 2007, a suit filed by the petitioner, wherein the respondent No. 1 at the outset had denied that the petitioner was the tenant of the suit premises.

4. The trial Court framed issues on 11th June, 2013 and one of the issue framed is *"Whether the plaintiffs proves that he is a tenant of the defendant No. 1 in respect of the suit premises ?"*. The petitioner had applied on 3rd July, 2013 for decree on admission in terms of prayer clause (a)

of the plaint in RAD Suit No. 1190 of 2007 in view of the averments contained in the plaint in RAE Suit No. 554 of 2010. According to the petitioner, in RAE Suit No. 544 of 2010 at paragraph No. 20, it is averred as,

"The Plaintiff values the present suit for purposes of Court Fees and jurisdiction at Rs. 357.12np being the Annual Rack Rent and the Plaintiff has paid fixed Court fees of Rs. 200/- under the provisions of Section 6(xii)(d) of the Bombay Court Fees Act,1959".

5. In the application, it is also stated that in view of the averments made in para 23 of RAE Suit No. 554 of 2010, the respondent No.1 has submitted that the petitioner herein is a tenant and therefore a decree on admission ought to be granted under Order XII Rule 6 of the Code of Civil Procedure,1908.

6. The trial Court after considering the rival submissions of the parties has come to conclusion that in RAE Suit No. 554 of 2010 the

respondent No.1 has not directly or clearly admitted that the petitioner herein is a tenant in respect of the suit premises. The Court has also considered the fact that, in the plaint it is also mentioned in para 5 that the petitioner herein has no lawful right in respect of the suit premises in any manner whatsoever and has been using the said premises unlawfully. The Court has also considered the averments in paragraph No. 6 of the plaint wherein the respondent No. 1 has averred that the petitioner does not have any rights in and over the suit premises ever granted in favour of the petitioner's father and the petitioner is falsely claiming that on demise of his father the rent receipts were allegedly transferred in the name of the petitioner.

7. In fact in the plaint it is also stated in para 13 that, the erstwhile landlords have already terminated the tenancy with respect to the suit

premises on account of non payment of arrears of rent due and payable by the defendant No.1. Just because of the averments contained in paragraph Nos. 20 and 23 relevant to the jurisdiction and the Court fees, it cannot be stated that respondent No.1 has admitted that the petitioner is a tenant in respect of the suit premises. In fact, Section 6(Xii)(d) of the Bombay Court Fees Act,1959 also provides, *"for the recovery of immovable property from a tenant including a tenant holding over after the determination of a tenancy"*.

8. Therefore the Court has come to its conclusion in the impugned order, after considering all the facts and circumstances of the matter.

9. The jurisdiction exercised under Article 227 of the Constitution of India is supervisory in nature. The foundation of the High Court under Article 227 of the Constitution of India is limited

to see that subordinate Court or trial Court functions within its limit or authority and not to see whether the order passed by the trial Court or tribunal was the correct order or not. It is exercised when the subordinate court has assumed the jurisdiction which it did not have or has failed to exercise the jurisdiction though available in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby. The Court may also step in and exercise its supervisory jurisdiction if there is an error which is manifest and apparent on the face of the proceedings and grave injustice or gross failure of justice has occasioned thereby. (*Surya Dev Rai vs. Ram Chander Rai & Ors.*¹).

10. I find no infirmity and perversity in the order. The petition, therefore stands rejected.

(K.R. SHRIRAM, J.)

1. AIR 2003 SC 3044.