

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 156 OF 2007

Kalyanji Nanji Shah .. Petitioner
VS.
Smt. Madhuriben Meghji Shah & Ors. .. Respondents

Ms Vidita S. Bhalekar i/b. Mr. Sameer R. Bhalekar for Petitioner.
Mr. V. T. Lulia for Respondent Nos. 1 to 4.
Mr. Shashi K. Jain with Ms Naina Desai for Respondent Nos. 5 to 8.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 09 April 2015

Date of Pronouncing the Judgment : 15 June 2015

JUDGMENT :-

1] This civil revision application challenges judgment and order dated 28 August 2006 made by the City Civil Court at Mumbai in S.C. Suit No. 3172 of 1984 dismissing the petitioner's suit under Section 6 of the Specific Relief Act, 1963 (said Act).

2] During the pendency of this CRA, the Court Receiver came to be continued in respect of the suit premises and the petitioner has been placed in possession of the suit premises as the agent of the Court Receiver, subject to certain terms and conditions, including terms and conditions with regard to payment of royalty. This position, continues till date.

3] The petitioner contends that the suit premises, being shop no. 20 situate at Municipal Market, Borivali (West), Mumbai, were let out by the respondents to the petitioner upon payment of Rs.15,000/- by way of deposit and monthly compensation of Rs.350/- per month. On 20 April 1984, the respondents (their predecessors-in-title) broke open the locks to the suit premises and forcibly dispossessed the petitioner therefrom. The petitioner filed police complaints and thereafter instituted suit under Section 6 of the said Act seeking recovery of possession.

4] The respondents contend that the petitioner was the '*Naukar*' (servant) of the respondents. In order to substantiate this contention, the respondents made reference to '*Naukarnama*' which was stated to have been kept in the suit premises, but taken away by the petitioner. The respondents also relied upon records and depositions of Shop Inspector N. K. Parab to the effect that the suit premises were registered under the name and style of 'Bharat Stores' and the record had indicated that the petitioner was the employee therein. The respondents also urged that the City Civil Court lacked pecuniary jurisdiction to entertain the suit.

5] The City Civil Court, Mumbai, by impugned judgment and order dated 28 August 2006, has at the outset held that the suit as

instituted was beyond its pecuniary jurisdiction. Despite record of such finding however, the City Civil Court has proceeded to record the findings on merits, *inter alia* to the effect that the petitioner had failed to establish any title to the suit premises or to show that the petitioner was in possession of the suit premises in his own right and on the said basis dismissed the petitioner's suit.

6] Ms Vidita Bhalekar, the learned counsel for the petitioner made the following submissions in support of the revision petition:

(A) That once the City Civil Court come to the conclusion that it had lacked pecuniary jurisdiction to entertain the suit, the City Civil Court was duty bound to return the plaint for presentation before the competent court and not proceed to decide the matter on merits. The decision on merits, is consequently without jurisdiction and *ultra vires*. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of *Oil and Natural Gas Corporation Limited vs. Modern Construction & Company*¹.

(B) That the findings on merits, are even otherwise unsustainable. The City Civil Court failed to appreciate that the issue of 'title' was quite alien to the scope of proceedings under Section 6 of the said Act. The material on record clearly established that the petitioner was in settled possession of the

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suit premises and that such settled possession was disturbed by the respondents, otherwise than by due course of law;

(C) That the findings in the impugned judgment and order are vitiated by perversity and are contrary to the weight of evidence on record. The City Civil Court has failed to exercise jurisdiction vested in it or in any case exercised jurisdiction illegally and with material irregularity.

7] Mr. V. T. Lulia and Mr. Shashi K. Jain, the learned counsels for the respective respondents supported the impugned order by submitting that there was no warrant to interfere by exercising revisional jurisdiction under Section 115 of the CPC. Mr. Lulia submitted that although there is reference to title of the petitioner in the impugned judgment and order, the same is really in the context of the respondents contention that the petitioner was only their servant and therefore never had any independent possession of the suit premises. On the aspect of territorial jurisdiction, Mr. Lulia submitted that consequent upon change in law, the pecuniary jurisdiction of the City Civil Court stands enhanced and even if the plaint has to be returned at this point of time, the same would have to be instituted in the City Civil Court itself, which would have the pecuniary jurisdiction to entertain the suit. Mr. Lulia therefore submitted that there is no reason to interfere with the impugned

judgment and order, based upon some hyper technicality. The learned counsels, submitted that the material on record has been duly considered by the City Civil Court and the suit was rightly dismissed.

8] There is substance in the contention of Ms. Bhalekar that the City Civil Court ought to have returned the plaint for presentation before the appropriate Court, once it recorded the finding that the suit as instituted was beyond its pecuniary jurisdiction. However, at this point of time, no useful purpose would be served by interfering with the impugned judgment and order, only upon such a ground. This is because in the meanwhile, the pecuniary jurisdiction of the City Civil Court has been enhanced and the suit as instituted would be within the pecuniary jurisdiction of the City Civil Court. In the peculiar facts and circumstances of this case therefore although the issue raised by Ms Bhalekar deserves acceptance, there is no reason to exercise revisional jurisdiction and to set aside the impugned judgment and order, merely upon such a ground.

9] The impugned judgment and order however warrants interference because the City Civil Court does appear to have applied the incorrect tests in the context of scope and import of proceedings under Section 6 of the said Act. In proceedings under

Section 6 of the said Act, what is vital is the issue as to whether the plaintiff was in settled possession of the suit premises and has been evicted therefrom, otherwise than by the due course of law. Issue of title is quite irrelevant or alien to such proceedings. The City Civil Court, in the present case proceeded to frame an issue as to whether the plaintiff has proved that he has valid title to the suit shop and thereafter has answered such issue against the petitioner – plaintiff, in order to non-suit him. Such an approach, clearly constitutes an illegality as well as material irregularity warranting exercise of revisional jurisdiction under Section 115 of the CPC.

10] It is almost settled position in law that in proceedings under Section 6 of the said Act, ordinarily, there is no question of any enquiry as to titles. In such a suit, the Courts must decide the question of possession and whether the plaintiff has been ousted from possession, otherwise than by the due course of law. Proceedings under Section 6 of the said Act are summary in nature, the object being speedy disposal of cases so that a person ousted from possession otherwise than by due course of law is restored possession giving liberty to the opposite party to sue for possession on the basis of better title of possession. The jurisdiction of the Courts under Section 6 is quite limited and in exercise of the same, the Civil Court is not required to go into question of the title of the

parties involved. Under Section 6, even a person who has no title, but is in settled possession can claim restoration of possession, where such person has been evicted by use of force or otherwise than due course of law, even where such eviction is by a superior title holder. The object of such proceedings is not to settle the disputes of title but to safeguard against illegal or high handed dispossession except by procedure established by law. The object of such proceedings is to discourage the defendant to take law in his own hands and to dispossess the plaintiff in possession, irrespective of the title of the parties. The question therefore, is really and ordinarily not one of lawful possession of the plaintiff, but the moot question is of his unlawful dispossession.

11] In the present case, the learned City Civil Court, has failed to take note of and appreciate the true and correct scope and import of proceedings under Section 6 of the said Act. The learned City Civil Court proceeded to frame an issue of title. Thereafter, the learned City Civil Court examined the material on record in the context of determining whether the petitioner – plaintiff had indeed established his title to the suit premises. As noted earlier, such an approach was clearly erroneous and untenable. This, clearly vitiates the impugned judgment and order.

12] There is no necessity to examine as to whether certain findings of fact in the impugned judgment and order are vitiated by perversity or not. This is because the impugned judgment and order shall have to be set aside on the ground that the learned City Civil Court failed to take note of and appreciate the true and correct scope and import of proceedings under Section 6 of the said Act. The matter is required to be remanded to the learned City Civil Court for fresh decision, by applying the true and correct tests as regards the scope and import of proceedings under Section 6 of the said Act.

13] Accordingly, the impugned judgment and order is set aside. The matter is remanded to the City Civil Court for fresh decision, in accordance with the observations as to the scope and import of proceedings under Section 6 of the said Act. The interim arrangement / position, which prevails presently, shall continue during the pendency and final disposal of S.C. Suit No. 3172 of 1984, which is now remanded to the City Civil Court for fresh decision on the basis of evidence already led by the respective parties. The petitioner – plaintiff shall however pay compensation / royalty at the rate of 30% over and above the compensation / royalty rate presently fixed by the Court Receiver. The Court Civil Court is granted liberty to make appropriate orders in that regard as

well. The City Civil Court to however dispose of the suit as expeditiously as possible and in any case within one year from today.

14] Rule is made absolute to the aforesaid extent. In the facts and circumstances of the case, there shall be no order as to costs.

15] All parties to act on the basis of an authenticated copy of this order.

(M. S. SONAK, J.)

Chandka