

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 237 OF 2015
WITH
CIVIL APPLICATION NO.508 OF 2015 IN SA/237/2015**

1. Adam Hasan Bagwan and ..Appellants
Ors.

Vs

1. Rajkumar Baichand Gandhi
(dead), through his legal heirs: .. Respondents
1-A. Bhartesh Rajkumar
Gandhi and Ors.

Mr. Praful B. Shah, Advocate for Appellants.
Mr. Surel S. Shah, Advocate for Respondents.

CORAM : R.G.KETKAR,J.
DATE : 06/05/2015

PC:

1. Heard Mr. Praful B. Shah, learned counsel for the appellants and Mr. Surel S. Shah, learned counsel for the respondents at length.

2. By this Appeal under Section 100 of the Code of Civil Procedure, 1908, (for short, 'C.P.C. '), original defendant no.1 and legal representatives of defendant no.2 have challenged the Judgment and decree dated 30.4.2002 passed by the learned Jt. Civil Judge, Sr.Dn., Pandharpur in Special Suit No.159 of 1995 as also the Judgment and decree dated

6.1.2015 passed by the learned Addl. District Judge, Malshiras in Civil Appeal No.113 of 2004. By these orders, the Courts below partly decreed the suit instituted by the respondent, hereinafter referred to as 'plaintiff' and directed the appellants, hereinafter referred to as 'defendants' to hand over possession of Godown admeasuring 40'x40' out of C.T.S.No.1567, situate at village Akluj, Tal.Malshiras, District-Solapur, (for short, 'suit premises'), within a period of two months from the date of the order. The defendants are also ordered to pay an amount of Rs.25,200/- to the plaintiff on account of damages. The Courts below have also ordered enquiry into mesne profits from the date of filing of the suit till delivery of possession as provided under Order XX rule 12(c) of C.P.C.

3. In support of this Appeal, Mr. Praful Shah reiterated the submissions that were advanced before the Courts below. He submitted that the appellants were inducted as tenants in the suit premises in the year 1974. The said fact is evident from licence at Exhibits 54 and 55 issued under the Bombay Shops and Establishment Act, 1948 (for short, 'Shop Act'). Licence at Exhibit-54 was issued on 15.2.1974. Licence at Exhibit-55 is dated 25.1.2001. He further submitted that the defendants had filed application for fixation of standard rent as initially in

the year 1974 the plaintiff was charging Rs. 150/- per month and, thereafter, from time to time it was increased to Rs.1100/- in the year 1992. He submitted that the Courts below committed serious error in not considering the licences at Exhibits 54 and 55. Non-consideration of important piece of evidence amounts to raising substantial question of law. He, therefore, submitted that Appeal requires consideration as it involves substantial questions of law.

4. On the other hand, Mr. Surel Shah supported the impugned orders. He submitted that the Courts below, after considering the evidence on record including licences at Exhibits 54 and 55, have held that the defendants failed to establish that they are tenants in the suit premises and that they were inducted in the year 1974. He, therefore, submitted that no case is made out for invoking Section 100 of C.P.C.

5. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record. Mr Shah heavily relied upon licence at Exhibit-54 issued on 15.2.1974 to contend that the defendants were inducted as tenants in the year 1974. He also relied upon licence at Exhibit 55 dated 25.1.2001. The learned trial Judge has considered this aspect in paragraph

13. After considering provisions of the Shop Act, the learned trial Judge held that the licences issued under the Shop Act at Exhibits 54 and 55 are not sufficient proof that the defendants are in possession of the suit premises since 1974. If at all the defendants are in possession as tenants right from 1974, surely they would have produced some documentary evidence/correspondence in support of that case. The defendants did not produce any documentary evidence to substantiate their possession from 1974 till filing of the suit.

6. In paragraph 14, the learned trial Judge also made reference to the notice issued by the defendants at Exhibit 53 to the plaintiff. The learned trial Judge observed that in the notice, the defendants did not set out that they were inducted in the suit premises in the year 1974. Even in the Written Statement, the defendants did not come out with the case that the suit premises were let out to them in the year 1974. As against this, the plaintiff came with the case that due to litigation between himself and his brothers, he did not take care of the suit premises and taking advantage of this fact, the defendants forcibly entered in the suit premises in the year 1992 and the suit is instituted on 6.9.1995. In paragraph 15, the learned trial Judge also noted that the defendants did not produce any documentary evidence to show that their

names have been mutated to the Gram Panchayat record in the year 1974 to prove their possession.

7. As far as the Appellate Court is concerned, the learned District Judge has considered this aspect in paragraphs 9 to 12. The learned District Judge noted that no documentary evidence is produced to show that they are tenants in the suit godown except licences issued under the Shop Act at Exhibits 54 and 55. The defendants did not produce any rent receipts. Extract of assessment produced on record shows the name of the plaintiff since 1974 upto 1994-95 and for the first time the name of the defendants was recorded in the column of 'possessors' in village assessment list for the year 1994-95. In paragraph 10, the learned District Judge observed that there is no evidence on record to show that since 1974 the defendants are possessing the suit premises as, according to them, they are storing the Bananas in the suit premises. They did not examine any person in support of that case.

8. In paragraph 11, the learned District Judge considered licence at Exhibit-54 issued on 15.2.1974 and observed that the defendants did not produce any consent letter issued by the plaintiff in their favour for obtaining licence. The defendants also did not produce original applications for obtaining licence under the Shop Act. The learned District

Judge also noted that though the licence was issued on 15.2.1974 it was renewed immediately in the next month, ie on 28.3.1974. As far as licence at Exhibit 55 dated 25.1.2001 is concerned, the words "CTS 1576 on eastern side" are inserted subsequently or added and, therefore, the licence is not safe to rely. In the first place, licence was issued after instituting the suit in the year 1995. Secondly, the learned District Judge did not deem it fit to rely upon the licence as there was interpolation. In paragraph 13, the learned District Judge also noted that not a single chit is on record to show that since 1974 upto 1992 the defendants paid rent of the suit premises to the plaintiff.

9. After considering the material on record as also the findings recorded by the courts below, I do not find that the courts below committed any error in decreeing the suit. The defendants were not in a position to demonstrate that the findings recorded by the Courts below are perverse being based on no evidence or that they are contrary to the evidence on record. Merely because another view is possible, that itself is no ground for invoking powers under section 100 of C.P.C. No question of law, much less any substantial question of law arises in this Appeal.

10. Before parting, it is necessary to consider the decision

of the Apex Court in the case of Maria Margarida Sequeria Fernandes Vs. Erasmo Jack de Sequeria (Dead) through L.Rs, AIR 2012 Supreme Court 1727. The Apex Court observed in paragraphs 84 and 85 as under:-

“False claims and false defences

84. False claims and defences are really serious problems with real estate litigation, predominantly because of ever escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount. This happens because of the enormous delay in adjudication of cases in our Courts. If pragmatic approach is adopted, then this problem can be minimized to a large extent.

85. This Court in a recent judgment in Ramrameshwari Devi and Ors. (AIR 2011 SC (Civ) 1776:2011 AIR SCW 4000) (supra) aptly observed at page 266 that unless wrongdoers are denied profit from frivolous litigation, it would be difficult to prevent it. In order to curb uncalled for and frivolous litigation, the Courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that Court's otherwise scarce time is consumed or more appropriately, wasted in a large number of uncalled for cases. In this very judgment, the Court provided that this problem can be solved or at least be minimized if exemplary cost is imposed for instituting frivolous litigation. The Court observed at pages 267-268 that imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate cases would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases, the Courts may consider ordering prosecution otherwise it may not be possible to

maintain purity and sanctity of judicial proceedings.

Grant or refusal of an injunction.”

11. In paragraph 85, the Apex Court has considered its earlier decision in Ramrameshwari Devi and observed that imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate cases would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Though I was inclined to impose exemplary cost on the appellants but having regard to the fact that defendant no.1 who is present in the Court is handicapped person, I refrain from imposing cost. In the light of above discussion, Appeal fails and the same is dismissed.

12. In view of dismissal of the Appeal, Civil Application No.508 of 2015 for stay does not survive and the same is disposed of.

13. At this stage, Mr. Shah orally applies for stay of this order for a period of 8 weeks from today. He states that within two weeks from today, the appellants and all the adult family members carrying on business with them in the suit premises will file undertaking in this Court incorporating therein :

- (i) that the appellants are in possession and nobody else else is in possession;
- (ii) that the appellants have neither created any third party interest nor parted with possession;
- (iii) that the appellants will hereafter neither create third party interest nor part with possession;
- (iv) that in case the appellants are unable to obtain suitable orders from higher Court within 8 weeks from today, they will hand over vacant and peaceful possession of the suit premises to the respondent.

14. Before filing the undertaking, the appellants shall serve copy of the undertaking on the other side and if the undertaking in above terms is filed, the same shall stand accepted by this Court. Subject to the appellants filing undertaking in the aforesaid terms within two weeks from today, this order shall remain stayed for a period of 8 weeks from today.

15. It is made made clear that if the appellants do not file the undertaking in the aforesaid terms, the stay shall stand vacated without further reference to the Court. It is further made clear that in case the appellants do not obtain suitable orders from higher court within eight weeks from today and do not hand over possession of the suit premises to the

respondent, the respondent would be at liberty to proceed against them in accordance with law. Order accordingly.

(R.G.KETKAR, J.)