

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 244 OF 2008

Mukesh Ramphool Gupta .. Petitioner
vs.
Ramakant Keshawdeo Sharma & Ors. .. Respondents

Ms Gauri Godse for Petitioner.
Mr. P. J. Thorat i/b. Mr. S. K. Jain for Respondent No. 1.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 10 April 2015
Date of Pronouncing the Judgment : 15 June 2015

JUDGMENT :-

1] This revision application is directed against judgment and order dated 14 February 2008 made by the City Civil Court, Mumbai, in Short Cause Suit No. 838 of 1998 directing restoration of possession of the suit premises to the respondent no. 1, in exercise of powers under Section 6 of the Specific Relief Act, 1963 (said Act).

2] The case of the respondent no. 1 (original plaintiff) was that he was the tenant of flat no. 1 in the building Manoj Kunj situate at 144 Senapati Bapat Marg, Mumbai 400 016 since the year 1978. It is also the case of the respondent no. 1 that he was the Managing Director of Shree Polyfabric Silk Mills Pvt. Ltd., which company was

the tenant of flat no. 3 in the same building since the year 1965-1966. It is also the case of the respondent no. 1 that he was the tenant of the garage of the said building since the year 1978 and that on the night intervening 5 and 6 January 1998, the petitioner forcibly dispossessed the respondent no. 1 from the garage (suit premises) taking advantage of the fact that the car of the respondent no. 1 was away for repairs.

3] The case of the petitioner is that the respondent no. 1 was never in possession of the suit premises and that it is the petitioner who had been inducted in the suit premises by Mr. Bagri from the year 1972. In such circumstances, the petitioner contended that since the respondent no. 1 was never in possession of the suit premises, there was no question of alleging any forcible dispossession.

4] The City Civil Court by impugned judgment and order dated 14 February 2008 has recorded findings of fact that the respondent no. 1 was indeed in possession of the suit premises and further, was forcibly dispossessed therefrom on the night intervening 5 and 6 January 1998. On these basis, the City Civil Court proceeded to direct restoration of possession of the suit premises to the respondent no. 1.

5] Ms Godse, the learned counsel for the petitioner submitted that the learned City Civil Court, in making the impugned judgment and order, has acted illegally and with material irregularity. The findings of fact are vitiated by perversity and are contrary to the weight of evidence on record. Ms Godse submitted that the learned City Civil Court has not at all adverted to the issue of possession of the respondent no. 1, but merely focused upon the alleged incident on the night intervening 5 and 6 January 1998, to hold that there was dispossession. Ms Godse submitted that such an approach is by no means proper, particularly as the overwhelming material on record which established that the respondent no.1 was never in possession of the suit premises, has been totally ignored. For these reasons, Ms Godse submitted that the impugned judgment and order warrants interference by this Court in the exercise of its revisional jurisdiction.

6] Mr. P. J. Thorat, the learned counsel for the respondent no. 1 defended the impugned judgment and order by submitting that the findings of fact with regard to prior possession and dispossession are supported by both oral as well as documentary evidence on record. In such circumstances, Mr. Thorat submitted that there is no cause to interfere with the impugned judgment.

7] Rival contentions now fall for my determination.

8] At the outset, it needs to be noted that the legislature has not provided for any appeal against judgment and order under Section 6 of the said Act. However as has been held by this Court in the case of *Sangita Sunil Bhardiya vs. Rajendra Babulal Sarnot*¹, the remedy of revision under Section 115 of the CPC is available to impugn the judgment and order made under Section 6 of the said Act. In the exercise of revisional jurisdiction however the parameters prescribed under Section 115 of the CPC, shall have to be adhered to. Interference, under Section 115 of the CPC is permissible in a case which has been decided by any Court subordinate to the High Court and in which no appeal lies therefrom, and if such subordinate court appears to have exercised the jurisdiction not vested in it by law, or failed to have exercised the jurisdiction so vested, or to have acted in the exercise of its jurisdiction illegally or with material irregularity.

9] In the case of *Ramesh s/o. Madhavrao Shelke vs. Bhaskar s/o. Seetaram Pradhan*², this Court in the context of defining the scope of a revision petition against judgment and order under

1 2007 (1) Bom. C.R. 495

2 2011 (2) ALL MR 258

Section 6 of the said Act took note of the decisions rendered by the Hon'ble Apex Court and has observed thus :

“While exercising revisional jurisdiction, this Court has to keep in mind the scope of Section 115 of the Code of Civil Procedure.

*In case of **M. L. Sethi vs. Shri R. P. Kapoor**, reported in **A.I.R. 1972 SC 2379**, the Supreme Court has observed that even gross errors of facts and law cannot be gone into in revisional jurisdiction. Yet, in another judgment in case of **DLF Housing & Constructions Co. (P) Ltd. Vs. Saroopsing and others**, reported in **AIR 1971 SC 2324**, the Supreme Court held that while exercising revisional jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross or even errors of law unless the errors have relation to the jurisdiction of the Court to try the dispute itself. Yet in another judgment in the case of **Managing Director (MIG) Hindustan Aeronautics Ltd., Balanagar Hyderabad and another vs. Ajit Prasad Tarway, Manager (Purchase and Stores) Hindustan Aeronautics Ltd., Balanagar Hyderabad**, reported in **AIR 1973 SC 76**, the Honorable Supreme Court held that revisional Court can only see whether the Court below had jurisdiction. If it had jurisdiction to entertain the proceedings, the Hight Court cannot interfere. In the case of **Harishankar and others vs. Rao Giridhari Lal Chowdhary**, reported in **AIR 1963 SC 698**, the Supreme Court has distinguished between right of appeal and right of revision and held that, scope of revisional jurisdiction is limited. yet in another judgment in the case of **Faijulbee Hajeel & others vs. Yadali Amir Shaikh Ansari**, reported in **1984(2) Bom. C.R.***

*253, the Division Bench of this Court held that the decision on question of facts is not amenable to revisional jurisdiction of the High Court. In the judgment in case of **Sanjay Kumar Pandey and others vs. Gulabhar Sheikh and others**, reported in **AIR 2004 SC 3354 : [2004(5) ALL MR (S.C.) 542]**, the Supreme Court held that the revisional court cannot refer to part of the evidence and reverse the findings of the fact. In paragraphs 4 and 5, the Court has clarified that the revisional jurisdiction would be exercised in exceptional circumstances and normally the party should file independent suit to establish title.”*

10] In the present case, the complaint is not that the City Civil Court has failed to exercise vested in it or exercised jurisdiction not so vested in it. The complaint, at the highest, is that the City Civil Court, in the exercise of its jurisdiction has acted illegally or with material irregularity. The words “*acting illegally*” mean acting in breach of some provision of law and the words “*acting with material irregularity*” mean committing some error of procedure in the course of trial which is material in that it may have affected the ultimate decision. In such proceedings further, there is no question of re-appreciation of the material on record as in case of regular appeal. Interference is warranted, where the entire approach of the City Civil Court is improper or illegal. Interference may also be warranted where an illegality is patent and the City Civil Court has applied incorrect tests or incorrect parameters to deal with

proceedings under Section 6 of the said Act. Interference may also be possible where findings of fact are perverse, in the sense that no authority trained in law, could have ever returned the same on the basis of material on record. Interference may also be permissible where the findings of fact are totally contrary to the weight of evidence on record. However, if the findings of fact are supported by the evidence on record, then the same cannot be disturbed in the exercise of revisional jurisdiction, merely on the grounds of inadequacy of evidence or on the basis of re-appreciation of the evidence on record. The contentions raised by Ms Godse shall therefore have to be examined in the light of the restricted revisional parameters under Section 115 of the CPC.

11] The criticism that the City Civil Court has not at all determined the factum of prior and settled possession of the respondent no.1 qua the suit premises, cannot be said to be justified. The impugned judgment and order, on basis of the material on record records categorical finding on this aspect in favour of the respondent no. 1. The impugned judgment and order, by reference to the decision of the Hon'ble Apex Court in the case of *Dastane vs. Dastane*³ has rightly observed that the standard of proof in civil proceedings would be that of preponderance of probabilities, unlike any criminal trial where the standard would be proof beyond reasonable doubt. This

3 AIR 1975 SC 1534

dictum would apply with greater vigour to summary proceedings under Section 6 of the said Act, particularly since Section 6 (4) of the said Act clarifies that any possession under Section 6 of the said Act will not bar any party from instituting a regular suit for declaration of title and possession.

12] There is evidence on record that the respondent no. 1 was tenant in respect of flat no. 1 of the building Manoj Kunj. The suit premises i.e. the garage is located within the compound wall of the building complex Manoj Kunj. There is at least *prima facie* material which indicates that Mr. Gopal Bargi was the tenant of flat no. 1 and such tenancy was surrendered by Mr. Bargi to the landlord some time in 1975-1976 and Mr. Bargi shifted to alternate premises in some other building. There is really no dispute that the tenancy in respect of flat no. 1 was created by the landlord in favour of the respondent no. 1 in the year 1978. There is also no dispute that the respondent no. 1 was concerned with Shree Polyfabric Silk Mills Pvt. Ltd. which was a tenant in respect of flat no. 3 of building Manoj Kunj since 1965-66. The respondent no. 1, thus had control over two flats in the building Manoj Kunj and in this context it is not at all unreasonable to presume that the respondent no.1 was also put in possession of the garage i.e. the suit premises in the year 1978 or thereabouts as deposed to by him. There are rent receipts, there is

evidence that the respondent no. 1 was using the garage for the purposes of parking of Ambassador Car bearing No. BYN 4915 which establishes that the respondent no. 1 was indeed in possession of the suit premises for considerable number of years, prior to his dispossession.

13] Even on the aspect of dispossession, the evidence on record, certainly supports the case of the respondent no. 1. On the night intervening 5 and 6 January 1998 collapsible shutters were affixed to the suit premises by about 4-5 persons i.e. Ashok Gupta, Hemant Gupta, Mukesh Gupta and Satish Gupta family members of the petitioner. 4-5 workers were also present at the site and Gopal Bargi, who had already shifted his residence to some other building was also on the spot. One Nandkumar Sathe, who came to be examined as D.W. 2 was the contractor engaged for doing the business of fabrication and affixation of the collapsible shutter, was also present. Police complaints were filed almost contemporaneously. The oral as well as documentary evidence supports the case of the respondent no. 1. Even the petitioner, does not seriously deny the incident as such, but merely explains that the collapsible shutter was being affixed, as a part of routine repairs or to provide security, in the ordinary course of repairs. The very timing of the so-called repair exercise i.e. late hours in the night

intervening 5 and 6 January 1998 and the presence of so many persons at the site, militates against the alleged routineness of the exercise. The City Civil Court, in exercise of its summary jurisdiction, has reasonably appreciated the material on record and returned the finding that there was forcible dispossession of the respondent no. 1 in the night intervening 5 and 6 January 1998. There is no perversity in the record of such finding.

14] Ms Godse, did make attempt to invite this Court to virtually re-appreciate the entire evidence on record, by adverting to the actual depositions and documents tendered during the course of evidence. Although, such exercise is not warranted in the exercise of revisional jurisdiction, having undertaken such exercise, it really cannot be said that the findings recorded in the impugned judgment and order, are in any sense infirm or untenable particularly regarding the summary nature of the jurisdiction exercised by the Court in proceedings under Section 6 of the said Act. The depositions of the parties as well as the documentary evidence produced by them reasonably support the findings on the aspect of prior possession and forcible dispossession in the night intervening 5 and 6 January 1998. In proceedings of this nature, there is no scope for interference with findings of fact on the basis of some minor contradictions or other matters, which mainly fall within the

realm of re-appreciation of evidence. As noted earlier, the present proceedings, are not akin to appellate proceedings. In such circumstances, it is not possible to re-appreciate the entire material on record, with a view to examine whether a different view is possible in the facts and circumstances of the case.

15] There is accordingly no reason to interfere with the impugned judgment and order. This CRA is liable to be dismissed and is so dismissed. Rule is discharged. In the facts and circumstances of the present case there shall be no order as to costs.

(M. S. SONAK, J.)

16] At this stage, learned counsel for the petitioner seeks for extension of interim relief by a period of eight weeks from today, in order to enable the petitioner to take recourse against this judgment and order before the Hon'ble Apex Court. Subject to the petitioner filing the usual undertaking in this Court within a period of one week from today, the interim relief as against the judgment and order impugned in this revision application, shall stand extended for a period of eight weeks from today.

(M. S. SONAK, J.)