

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
REVIEW APPLICATION NO.76 OF 2014
IN
CIVIL REVISION APPLICATION NO.407 OF 2013

Chowgule Industries Pvt. Ltd. and another ... Petitioners
Vs.
Supermax International Limited and others ... Respondents

Mr. Anil Tiwari for Petitioners.
Mr. Vaibhav Sugdare a/w. Mr. Sumit Raghani i/b. PDS & Associates for
Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : FEBRUARY 6, 2015

P.C.:

Heard Mr. Tiwari, learned Counsel for petitioners and Mr. Sugdare, learned Counsel for respondent No.1. Mr. Tiwari submitted that in pursuance of the order dated 30.01.2015, the petitioner has handed over vacant and peaceful possession of the suit premises to the respondent No.1 on 01.02.2015. Mr. Sugdare acknowledges that fact.

2. By this Petition under Section 114 read with Order 47 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), the petitioners have sought review of the order dated 19.11.2013 passed by this Court in Civil Revision Application No.407 of 2013. By that order, the Petition filed by the petitioners herein under Section 115 of C.P.C. was dismissed.

3. In support of this Petition, Mr. Tiwari invited my attention to two documents namely, (i) communication dated 04.03.1972 at exhibit-7 addressed by Contract Officer (South), Bombay Telhones to M/s. Chowgule Brothers, India House, 3rd Floor, Opposite GPO, Bombay 1. By that letter, Contract Officer (South), Bombay Telhones acknowledged receipt of letter dated 04.03.1972 addressed by M/s. Chowgule Brothers

enclosing therewith Power of Attorney in original executed in favour of Mr. G. P. Peeis and (ii) letter dated 17.11.1972 addressed by Algemene Bank Nederland N. V. Bombay Branch to M/s. Chowgule Brothers, India House, 3rd Floor, Opposite GPO, Bombay 1.

4. Mr. Tiwari submitted that both these documents were not considered by the trial Court, appellate Court as also by this Court. These letters go to the root of the matter in the sense that they clearly establish the factum of possession of M/s. Chowgule Brothers prior to 01.02.1973. He submitted that since M/s. Chowgule Brothers is in possession of the suit premises prior to 01.02.1973, its possession is protected by virtue of amendment to the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. These vital documents were not considered while dismissing the Revision Application.

5. On the other hand, Mr. Sudgare submitted that paragraphs 6 and 7 of the order under review show that M/s. Chowgule Industries Private Limited was in possession of the suit premises and it shifted to Bakhtawar building in the year 1979. In other words, he submitted that so long as head tenant continued in possession of the suit premises, petitioner who was defendant No.2 in the Suit cannot claim any right.

6. I have considered the submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Paragraphs 7 and 8 of the order dated 19.11.2013 read as under:

“7. In paragraph 25, the Appellate Court considered admission given by DW-1. In the cross examination DW-1 admitted that defendant No.1 does have office premises in the suit building and defendant No.1 did not maintain muster roll at the address of the suit premises. In paragraph 27 the Appellate Court recorded that defendant No.1 shifted to Bakhtawar building in the year 1979.

8. The Appellate Court also considered submission made on behalf of defendant No.2 that it is in occupation of the suit premises prior to 1970 and therefore, is entitled to protection. The Appellate Court after appreciating the evidence on record held that defendant No.1 was occupying the suit premises till it shifted to Bakhtawar building in the year 1979. The Appellate Court held that defendant No.2 did not establish its occupation prior to 1970.”

7. Perusal of paragraph 7 shows that after appreciating the evidence on record, the appellate Court recorded finding in paragraph 27 that defendant No.1-Chowgule Industries Private Limited shifted to Bakhtawar building in the year 1979. In paragraph 8, it is recorded that the appellate Court considered the submissions made on behalf of the petitioner herein namely defendant No.2 in the trial Court that it is in occupation of the suit premises prior to 1970 and is entitled to protection. The appellate Court, after appreciating the evidence on record, held that Chowgule Industries Private Limited-defendant No.1 was occupying the suit premises till it shifted to Bakhtawar building in the year 1979. The appellate Court further held that petitioner herein-defendant No.2 did not establish its occupation prior to 1970. In view thereof, I do not find that these documents namely communication dated 04.03.1972 at exhibit-7 and communication dated 17.11.1972 at exhibit-8 are of any assistance to the petitioner. The Courts below, after appreciating the evidence on record, have concurrently found that head tenant was in possession of the suit premises till it shifted to Bakhtawar building in the year 1979. In the case of *Kamlesh Verma Vs. Mayawati*, **AIR 2013 SC 3301**, the Apex Court has considered the scope of review and has observed thus,

“The jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review. A review is by no means an appeal in

disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. The power of review can be exercised for correction of a mistake but not to substitute a view. The mere possibility of two views on the subject is not a ground for review. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII, Rule 1 of C.P.C. ”

8. In view thereof, petitioners have not made out any case for invocation of powers under Section 114 read with Order 47 of C.P.C. Hence, Review Petition fails and the same is dismissed.

9. At this juncture, Mr. Tiwari submits that by order dated 30.01.2015, the undertaking given by the respondent No.1 that it will not sell, alienate, part with possession of, or in any manner encumber or create third party interests in the suit premises being office No.2-A, 3rd floor, Malhotra House, Opposite GPO, Mumbai 400 001 was accepted. He submitted that the said undertaking may be continued for the period of 8 weeks from today.

10. Having regard to the fact that the petitioners intend to challenge this order before the higher Court, notwithstanding dismissal of the Petition, the undertaking given by the respondent No.1 in the form of affidavit dated 29.01.2015 shall remain in force 8 weeks from today. In other words, respondent No.1 shall not sell, alienate, part with possession of, or in any manner encumber or create third party interests in the suit premises being office No.2-A, 3rd floor, Malhotra House, Opposite GPO, Mumbai 400 001 for the period of 8 weeks from today. Order accordingly.

(R. G. KETKAR, J.)