

Sequeira

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

CIVIL REVISION APPLICATION NO. 295 OF 2014,

Along with

***CRA NO. 296 OF 2014, CRA NO.297 /2014; CRA NO. 298 /
2014; CRA NO. 299 / 2014; CRA NO. 300 / 2014; CRA NO.
301 / 2014; CRA NO. 302 / 2014; CRA NO. 303 OF 2014.***

Along with

***CRA NO. 305 / 2014; CRA NO. 306 OF 2014; CRA NO. 307 /
2014; CRA NO. 308 / 2014; CRA NO. 309 / 2014; CRA NO.
310 / 2014 AND CRA NO. 311 OF 2014.***

Towels India Export Ltd.

.. Applicant

Vs.

Pladia Plastic Dies Co. Pvt.Ltd & anr.

.. Respondents

Mr.S.K.Shinde a/w Prashant Jadhav, for the Applicant in all Revision Applications.

Mr.P.K.Dhakephalkar Senior advocate a/w Mr.Sameer Bhalekar i/b Mr.Mahesh Dhuri, for Respondent No.1 in all Revision Applications.

CORAM: N.M.Jamdar, J.

Wednesday 25 March, 2015

Oral Order :

By these applications, the Applicant seeks to challenge the order dated 16 December 2013 passed by Appellate Bench of Small Causes Court, Mumbai allowing the revision filed by the Respondents and setting aside the order dated 30 April 2012

passed by the learned Judge, Small Causes Court, Mumbai holding that the suit filed by the Respondents is not maintainable.

2 This group of matters involve common questions and they have been taken up for disposal together.

3 The parties had entered into an Agreement on 29 September 1993. It is pursuant to this Agreement that the Applicant was put in possession of 16 tenements which are in the premises known as 'Krishna Bhavan' situated at Govandi, Mumbai, some time in the year 1999. According to the Respondents, since the Applicant stopped using these premises, it was liable to be evicted for breach of the agreement dated 29 September 1993-a tenancy agreement. Accordingly the Respondents filed a suit in respect of each of the 16 tenements in the Small Causes Court, Mumbai.

4 Upon the application of the Applicant by order dated 18 November 2011, the learned Judge, Small Causes Court, framed a preliminary issue as to whether the Applicant proved that the Maharashtra Rent Control Act, 1999 is not applicable to the suit premises and whether Court had jurisdiction to decide the suit. The Small Causes Court recorded evidence pursuant to the preliminary issue. Both the parties led their oral evidence. After considering the evidence on record, the learned Small Causes Judge came to the conclusion that no rent was payable in respect of the premises and on the date when the agreement was executed the premises were not in existence. The learned Judge, Small

Causes Court also held that the agreement dated 29 September 1993 was not tenancy agreement and tenancy was merely a camouflage. Accordingly, by order dated 30 April 2012, the learned Judge, Small Causes Court disposed of the applications regarding preliminary issue holding that the Court had no jurisdiction to decide the suit.

5 The Respondents thereafter filed Miscellaneous appeals before the Appellate Bench of Small Causes Court, Mumbai. The Appellate Bench considered the averments made in the plaint, the agreement dated 29 September 1993, oral evidence and other material on record. The Appellate Bench, upon consideration of material before it, came to the conclusion that the agreement dated 29 September 1993 was a tenancy agreement and the Applicant understood it to be so and it paid rent of these tenements to the Respondents. The Appellate Bench also came to the conclusion that merely because option was given to the Applicant to purchase the premises, the document could not be said as an agreement conferring ownership rights on the Applicant and it was a tenancy agreement. The Appellate Bench by order dated 16 December 2013 allowed the Miscellaneous appeals filed by the Applicant. These orders have been challenged in the present group of Revision applications.

6 I have heard Mr.S.K.Shinde, learned counsel for Applicant and Mr.PK.Dhakephalkar, learned Senior advocate for Respondent No.1, in all the applications.

7 The main contention raised by Mr.Shinde, is regarding the interpretation of agreement dated 29 September 1993. According to Mr.Shinde that the entire agreement though uses the word tenancy and tenant, is nothing but an agreement creating ownership rights in favour of the Applicant and therefore, finding of the Appellate Court that the agreement is a tenancy agreement, is incorrect.

8 The preliminary issue was framed as regards the jurisdiction of the Court. Firstly, the averments in the plaint have to be considered along with the evidence adduced on record by the parties. In the plaint, the Respondents have averred that the Applicant is their monthly tenant on a contractual rent which is inclusive of the rent, taxes and permitted increases. It is averred that in the agreement dated 29 September 1993 the Applicant agreed to pay security deposit, and tenancy was created in favour of the Applicant. It is averred that in September 1999, the Respondents completed the construction and pursuant to the agreement dated 29 September 1993, Applicant was put in possession. It is further averred that since three years preceding filing of the suit the Applicant was carrying out the activities and suit premises were being used and therefore, on the ground of non-user the Applicant cannot be liable to give evidence. The case put up by the Respondents is based on the Agreement dated 29 September 1993.

9 Since the controversy revolves around the agreement dated 29 September 1993, the recitals thereof need to be considered. Firstly, the agreement is styled as a 'tenancy agreement'. It states that it creates a tenancy. In the recitals it is stated that certain areas of built up structure would be in excess of requirement of the Respondents and therefore, they were being offered on tenancy basis to person in need. Thereafter Respondents agreed to allot certain tenements to the Applicant who is styled as tenant. Clause (iv) refers to monthly rent. Clause (vi) permits subletting with the permission of the Respondents. Clause (vii) gives time-table for payment of interest being security deposit. Clause (viii) states that after the Applicant assumes occupation of these units, the Respondents may apply to the Director of Industries and subject to the permission granted by the Director, the Applicant will have option of purchase of tenement on payment of an additional amount. Thereafter it is also stated that the Respondents may arrange for the purchases to be constituted in a Cooperative Society.

10 Thus, plain reading of the agreement would show that what was sought to be created was a tenancy right in favour of the Applicant. This is a commercial document executed between the parties where specific terms have been issued, which are well understood. Both the parties with full knowledge signed a document which is styled as a tenancy agreement and has all ingredients of tenancy agreement.

11 It is the contention of Mr.Shinde that though this agreement is styled as a tenancy agreement, it is in fact camouflage document and ownership rights have been created in favour of the Applicant to purchase the tenements. In this connection the conduct of the Applicant needs to be noticed. From the year 1999 till 2006 when the suit was filed, the Respondents have submitted bills towards rent, maintenance, taxes, etc. which have been paid by the Applicant without raising any dispute. The rent is different for each of the tenements. In spite of the document being styled as tenancy document and receipts being issued treating the Applicant as a tenant, the Applicant has taken no steps to assert its right of ownership as claimed by it, till date. Any purchaser being bound by an agreement which describes him as a tenant would not keep paying rent for years without asserting his right of ownership. The conduct of the party is also a good guide for interpretation of a document. Furthermore, it is informed that the Applicant has now transferred its interest in favour of Respondent No.2. The learned Appellate Bench having considered the various clauses of the agreement has held that the agreement has to be taken as tenancy agreement.

12 It has been rightly contended by learned Mr.Dhakephalkar, learned Senior counsel for the Respondents that document will have to be read as it is. Nothing is shown in the evidence led by parties that the intention was to the contrary. Merely reading the clauses which gives an option of purchase of an additional amount, the entire agreement which treats the Applicant as a tenant cannot

be held as not a tenancy agreement. Even clause (x) which is relied upon by Mr.Shinde, which according to him is akin to provisions of Maharashtra Ownership Flats (Regulations of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 will not convert the document in question in to anything other than a tenancy agreement.

13 It cannot be said that the interpretation of the agreement dated 29 September 1993 by the Appellate Bench, is perverse. The interpretation is a possible view of the document, which, in any case, on the face of it, is styled as a tenancy agreement.

14 In the circumstances, the order passed by the Appellate Bench holding that the Small Causes Court will have jurisdiction to try the suits filed by the Respondents, cannot be faulted with.

The Revision Applications are accordingly rejected.

(N.M.Jamdar, J.)