

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 326 OF 2015

|                                |    |             |
|--------------------------------|----|-------------|
| Suresh Baburao Shewale         | .. | Applicant   |
| vs.                            |    |             |
| Deshastha Rhugwedi Brahman     |    |             |
| Sikshan Uttejak Sanstha & Ors. | .. | Respondents |

Mr. T. Dande for Applicant.

Mr. K. U. Dhongade with Mr. S. V. Abhang for Respondents.

**CORAM : M. S. SONAK, J.**  
**DATE : 08 JULY 2015**

**P.C. :-**

1] This revision application is directed against judgment and decree dated 17 February 2005 made by the Small Causes Court, Pune and judgment and order dated 20 August 2014 made by the District Judge, Pune, confirming the judgment and decree dated 17 February 2005. The impugned orders direct the eviction of the applicant on the following grounds :-

(A) That the applicant - tenant, by changing the suit premises for the purposes other than for which they were let out has committed an act contrary to section 108A of the Transfer of Property Act, 1882, which is a ground recognized for eviction of tenants under Section 13 1(a) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (said Act).

(B) That the applicant tenant, has without the landlords consent given in writing, erected on the premises a permanent structure. This is a ground for eviction of tenant under Section 13 1(b) of the said Act.

2] The two Courts, have recorded a concurrent findings of fact on the aforesaid aspects. The applicant, despite raising defences in his written statement, failed to step into the witness box or produce any evidence in support of his defence. The findings of fact are borne from the material on record and there is no perversity in the record of the same. Accordingly, this is really not a case for exercise of revisional jurisdiction under Section 115 of the CPC.

3] The learned counsel for the applicant however submitted that Mr. Makrand Deo, P.W. 1 who deposed for and on behalf of the respondent trust produced no authority to depose for and on behalf of the respondent trust. All that this witness stated was that he was an active member of the trust. The two Courts, have dealt with this contention of the applicant. The suit for eviction in the present case, was instituted by the trust and consequently its trustees. Mr. Makrand Deo, deposed on behalf of the trust by stating that not only he is the active member of the trust but also that on two occasions he was the member of its managing committee. P.W. 1 also

deposed that he was conversant with the facts and circumstances of the case personally. In these circumstances, it cannot be said that the impugned orders warrant interference on the ground that P.W. 1 was not a competent witness in the matter.

4] Mr. Dande, the learned counsel for the applicant then contended that the lease was created several years ago and there is no record as to the precise purpose for which the lease was granted. The allegation is that the suit premises were earlier used as a grocery shop and such user was thereafter given up and the applicant commenced a shop for sale of electrical appliances. The learned counsel for the applicant submitted that such an act can hardly be regarded as one contrary to the provisions of Section 108(A) of the Transfer of Property Act, 1882. There is no necessity to decide this contention, because there is unimpeachable material on record that the applicant in the present case has indeed carried out construction of permanent nature or has erected upon the suit premises a permanent structure without the written consent of the landlords.

5] In the written statement, the applicant did not deny the factum of construction. However, some sort of defence was attempted to be raised that the suit premises were in a dilapidated condition and

urgent repairs were necessary. Suffice to state that the nature of constructions established from the record do not sound in the arena of repairs. That apart, the applicant led no evidence whatsoever in support of his defence.

6] As noted earlier, the two Courts have concurrently held that constructions of permanent nature were carried out by the applicant upon the suit premises. Apart from the deposition of P.W. 1 Makrand Deo, the landlords examined Pramod Ronghe (P.W. 2) who had been appointed as the Court Commissioner. The Court Commissioner has submitted a detailed report, which was tendered in the course of evidence and accepted in evidence. Paragraph 3 of the report, reads thus :

*“3) It is observed during the inspection, that the roof height is increased by 190 CMS and a potmal / mezzanine floor is seen constructed. The newly constructed portion is clearly visible from the photographs. The defendant has constructed a mezzanine floor with the help of girders, T section which are embedded in the walls and above that polished shahabad stones are placed. On the top of these shahabad stones, cement flooring is made. All this frame work and flooring is new and of permanent nature. Heavy load is placed on this floor. The two old wooden beams are seen at the original place. The roof is of C.G.I. Sheets fitted on steel pipes, some sheets are old and some are new.*

*A 2 ft wide steel stair-case is provided on the north-east corner of the shop, upto mezzanine floor, this is the*

*position at the suit site.*

*The photographs 1 to 4 show the newly plastered portion above the old wall, and the 5<sup>th</sup> shows the staircase. These photographs are part of this report. The drawing is also produced along with report which includes plan, elevation and cross section."*

7] There is no dispute that the aforesaid constructions were undertaken without any consent from the landlords or for that matter without obtaining any permissions from the local authorities. The contention that such constructions amount only to repairs, cannot be accepted. In any case, the circumstances in which the constructions were carried out that is in order to save the structure from collapse, have not at all been proved, since the applicant chose not to enter into the witness box or to produce any other evidence in support of such defence.

8] For all the aforesaid reasons, no case is made out to exercise the revisional jurisdiction. This revision application is dismissed. There shall be no order as to costs.

**(M. S. SONAK, J.)**