

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

CIVIL REVISION APPLICATION NO. 172 OF 2015

The Maharashtra State Power Loom ..Applicant

Vs.

Gautam Jechand Vora and Ors. ..Respondents

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Mr. Sandeep Bhagwat, Advocate i/b V.M. Abhyankar for Applicant.
Mr. Ramchandran N., Advocate i/b Narayan & Narayan for
Respondent.

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***CORAM : N.M. JAMDAR, J.
DATED : 07 APRIL 2015***

P.C.:

By this revision application, the applicant challenges the judgment and decree passed by the learned Small Causes Court, Mumbai and the Appeal Bench of the Small Causes Court, Mumbai directing eviction of the applicant. The respondent-trustee of the private trust namely Chandraprabhu Investments filed T.E. Suit No. 125/142 of 2007 in Small Causes Court, Mumbai seeking eviction of the applicant from the suit premises.

2. The suit premises admeasuring 4195 sq.ft. situated at 47, New Marine Lines, Mumbai on the first floor. The applicant is a company registered under the provisions of Companies Act, 1956

under the resolution passed by the Maharashtra State. It is the case of the respondent that the paid up capital of the petitioner is Rs.5,68,30,000/- as on 31 March 1991. Before instituting the suit, the respondent issued a notice to the applicant on 26 March 2007. Terminating the tenancy of the applicant is stated in the notice that in view of the provisions of Maharashtra State Rent Control Act, 1999. The applicant has lost protection of the rent clause and that applicant has committed various breaches of terms of tenancy.

3. In the suit, the applicant filed their written statement. They contested the suit on the ground that the applicant has not lost the protection of rent act and the notice of termination is not valid and that the suit is bad for non-joinder and mis-joinder of the parties as the trust is not made party to the suit. The learned Small Causes Court Judge considered the evidence produced on record and the arguments advanced and framed issues as regard the exemption from protection of the rent act. The learned Small Causes Court Judge held that the applicant being the company whose paid up share capital exceeded one crore was not entitled for the protection of the Rent Act. The learned Small Causes Court Judge held that the tenancy was terminated by issuing valid notice. As regard the contention of the applicant regarding mis-joinder and non-joinder, it was negated holding that all the trustees had filed the suit. Accordingly the learned Small Causes Court Judge by the judgment and decree dated 5 October 2010 decreed the suit filed by

the respondent and directed the applicant to vacate the premises. The applicant thereafter filed an appeal before the Appeal Bench of the Small Causes Court bearing no. 508/2010. The Appeal Bench of Small Causes Court considered the matter in detail and concurred with the finding of the learned Small Causes Court Judge and by judgment and order dated 9 February 2015 dismissed the appeal. These orders have been challenged in the present revision application.

4. The learned Counsel for the applicant firstly contended that the trust has not been joined as party in the suit and therefore the suit is of for mis-joinder. The argument has been dealt with by both the Courts below. Both the Courts have relied upon the provisions of order 31 sub-rule 1 of the Civil Procedure Code. Both the Courts have held that the phraseology is clear that the provision is directly and not mandatory. In the present case, the objection is that the trust has not filed the suit nor the trust has not joined as party in the suit. The perusal of the cause title of the suit shows that both the trustees of the private family trust have instituted the suit on behalf of the trust as its trustees. It also come on record that the trustees have filed a resolution authorizing one of the trustee deposed thus the suit is instituted by a private trust through its trustees on behalf of the trust i.e. an adequate compliance of order 31 sub-rule 1 of the Civil Procedure Code. The view taken by both the Courts below considering the facts of the present case and

nature of the trust, cannot be said to be perverse or illegal and will not lead to setting aside the decrees on that ground.

5. The next submission that was made is that the notice issued by the respondent is not valid as it does not give any particulars. The applicant is no longer enjoys the protection of the rent act. It is not necessary for the respondent to give all the particulars of the notice as if it is a plaint . Adequate details are pleaded in the notice. The notice has been served on the applicants, therefore the contention raised by the learned Counsel for the applicant in this regard cannot be accepted.

6. The learned Counsel for the applicant across the bar submitted that the action of the respondent is not bonafide as the applicant seeks demolish the building. This ground is not taken in the Courts below. Furthermore, the learned Counsel for the respondent submitted that the building has become dilapidated and the notices have been issued by the municipal corporation under Section 354 of the Mumbai Municipal Corporation Act, for demolition. It is submitted that even electricity is cut off, the applicant has more or less become defunct and is only holding on to the premises.

7. Considering all the aspects above, it is not possible to interfere with the impugned orders in limited revisional jurisdiction.

There is no illegality or error of jurisdiction in the impugned order. The Revision Application is accordingly rejected.

8. The learned Counsel for the applicant submitted that by the impugned order, the applicant is directed to vacate the premises by 10 April 2015 and since the applicant intends to take the challenge further, seeks continuation of the protection. I am inclined to grant four weeks time to the applicant, however since it will take some time to get the copy of the order, it is directed for a period of six weeks, the applicant will not be disposed from the premises. This is on the condition that the applicant will not create any third party rights in that suit property and keep paying compensation as directed by the Appeal Bench of the Small Causes Court.

(N.M. JAMDAR, J.)