

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.211 OF 2007

1. Suresh Ratansinh Thakker,	]	
2. Kanaksinh Ratansinh Ashar,	]	
(Since Deceased)	]	
3. Narendra Ratansinh Ashar.	]	... Petitioners/ (Original Plaintiffs)

Versus

Prakash Bhagwandas Hinduja.	]	... Respondent/ (Original Defendant)
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None for Petitioners.
 Mr. Manoj Bhatia for Respondent.

CORAM :- M. S. SONAK, J.
DATE :- JUNE 09, 2015

P. C. :-

1. This Civil Revision Application was admitted on 31/07/2007 and interim stay was granted in terms of prayer clause (c). On 04/04/2008, this Civil Revision Application was dismissed for want of prosecution under Rule 6 Chapter VII of the Bombay High Court (Appellate Side) Rules, 1960. Thereafter on 29/04/2008, this Civil Revision Application was restored.

2. On 11/02/2011, the Petitioners applied for some time in order to engage a Senior Advocate. On 16/03/2011, neither the Petitioners nor their Advocate appeared and this Court made it clear

that in case the Advocate for Petitioners does not remain present on the next date, the petition shall be disposed of in his absence. On 12/12/2011, as none appeared for the Petitioners, the Civil Revision Application was dismissed for non-prosecution. Thereafter, the Civil Revision Application was restored by order dated 01/02/2012. On 20/03/2014, at the behest of the Respondent, the Civil Revision Application was expedited and was taken up for hearing on 08/06/2015. On the said date, neither the Petitioners nor their Advocate was present. After hearing the learned Counsel for Respondent for some time, the matter was adjourned to 09/06/2015, in order to afford yet another opportunity for either the Petitioners or their Advocate to appear in the matter. Today when the matter is called out at 4.00 p.m., again, neither the Petitioners nor their Advocate is present. In such circumstances, there is no option other than to proceed to dispose of this Civil Revision Application on its own merits in the absence of the Petitioners of their Advocate.

3. This Civil Revision Application challenges Judgment and Order dated 28/03/2007 made by the Appellate Bench of the Small Causes Court at Bombay, allowing Appeal No.352 of 2004 instituted by the Respondent against the Judgment and Order dated 19/12/2003 made by the Small Causes Court in Misc. Notice No.788 of 2002 in Execution Application No.2614 of 2002 in R.A.E. & R. Suit No.397/3017 of 1978. The effect of the impugned order dated 28/03/2007 is that the Petitioners have been directed to restore the possession of the suit premises to the Respondent along with articles

and things lying in the suit premises as per the inventory prepared by the Bailiff in in Execution Application No.2614 of 2002.

4. The suit premises in the present case comprises of Room No.9A, forming a part of Room No.9, which, according to the Respondent, was partitioned into Room Nos.9A and 9B. The Petitioners instituted R.A.E. & R. Suit No.397/3017 of 1978 against Laxmandas Khanchand and another as legal representative of Late Khanchand Hasharam seeking recovery of possession in respect of Room No.9. In this suit, neither the Respondent nor his father were implicated as a party, although, it is the case of the Respondent that the Petitioners were very much aware that the Respondent was in occupation of part of the suit premises i.e. Room No.9A. This suit was decreed *ex-parte* on 31/12/1995. In the Execution Application No.2614 of 2002, possession of the entire suit premises i.e. Room No.9, was recovered by the Petitioners. It is the case of the Respondent that the Respondent was not in the suit premises when the Execution Application was levied as his daughter had been hospitalized for malaria between the period 20/10/2002 and 24/10/2002. The occupants of the portion of the suit premises i.e. Room No.9B, one Jyoti Gandhi, obstructed the execution proceeding by setting up some claim.

5. The Respondent, after having lost possession, instituted proceedings being Misc. Notice No.788 of 2002 before the Small Causes Court seeking restoration of possession, *inter alia*, on the

ground that he was not a party to R.A.E & R. Suit No.397/3107 of 1978 and further by virtue of the provisions contained in Sections 14 and 15 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (said Act), the Respondent was a protected tenant, who could not have been evicted in the manner in which the eviction was sought to be effected.

6. Small Causes Court, by its Judgment and Order dated 19/12/2003, dismissed the Respondent's Misc. Notice No.788 of 2002. The Appellate Bench of the Small Causes Court, by the impugned order dated 28/03/2007, has however allowed the Respondent's appeal and directed restoration of possession of the suit premises i.e. Room No.9A to the Respondent.

7. In the memo of Civil Revision Application, apart from general grounds with regard to perversity and non-application of mind, the Petitioners have alleged that the Appellate Bench failed to appreciate that there was no agreement subsisting on the cut off date i.e. 01/02/1973, on basis of which the Respondent could avail statutory protection under Section 15A of the said Act. Besides, the revision memo urges that the evidence on record, at the highest, refers to allotment of table space to the Respondent and such allotment can never be regarded as license in respect of any premises or part thereof, which '*is less than a room*'. On these grounds, the memo of Civil Revision Application urges that the impugned Judgment and Order be interfered with.

8. On the other hand, Mr. Manoj Bhatia, learned Counsel for Respondent, submitted that the impugned Judgment and Order do not warrant any interference in exercise of revisional jurisdiction. Mr. Bhatia submitted that the affidavit filed by the Petitioners in the proceeding, themselves bear out that the Respondent was a licensee in respect of the suit premises i.e. Room No.9A, from the year 1953, which is much prior to the cut off date which is 01/02/1973. Relying upon the decision of the Hon'ble Apex Court in the case of ***Bhailal Hukamchand Shah Versus Narandas Shamji***¹, Mr. Bhatia submitted that the material on record clearly establishes that the Respondent was a statutory/protected tenant by virtue of the provisions contained in Sections 14 and 15 of the said Act.

9. Upon perusing the material on record, including, *inter alia*, the pleading, evidence and the impugned order, in my judgment, no case is made out to interfere with the impugned order made by the Appellate Bench of the Small Causes Court.

10. In the affidavit in reply filed by the Petitioner No.3 Narendra Ratansinh Ashar on 13/02/2003 in response to Misc. Notice No.788 of 2002, at para 3, the Petitioner No.3 has stated as follows :-

“3. With reference to para 2 of the application, I deny that Shri Bhagwandas Hinduja was in exclusive possession of the half portion of the suit premises since 1953 as alleged. I say that the applicant had relied upon

¹ 1989 AIR (SC) 2193 : 1989 (3) JT 666 : 1989 (2) Scale 560 : 1990 (Supp.1) SCC 570

the receipt dated 1st December 1954 issued by the original tenant to Shri Bhagwandas Hinduja and the said receipt in respect of a table space given on leave and license basis in the suit premises. Even the receipt dated 16th December 1970 is in respect of compensation for use of the a portion of the office premises (suit premises). Even the agreement dated 31st August 1953 relates to a portion of the office premises which was given to Shri Bhagwandas Hinduja as a licensee. I further say that Shri Sadhuram J. Lulla and Shri Bhagwandas Hinduja put up a partition in the suit premises in the year 1970, without the knowledge and consent of the Plaintiff. I further say that the license granted to Shri Bhagwandas Hinduja was not renewed from time to time and as such he cannot get the benefit of the provisions of the Bombay Rent Control Act. I deny that the applicant used to meet his customers in the application premises during the lifetime of his father and that after the demise of Shri Bhagwandas Hinduja the applicant continued to attend the application premises as thereto before.”

11. In the aforesaid affidavit, there is reference to Shri Sadhuram Lulla and the Respondent putting up a partition in the suit premises in the year 1970, though without the knowledge and consent of the Petitions. There is no statement in the affidavit dated 13/02/2003 that the Petitioners acquired knowledge about such

partition being put up, *inter alia*, by the Respondent at some belated point of time. Upon consideration of the averments in the affidavit, it is apparent that the Petitioners were aware of the possession of the Respondent qua the portion of the suit premises. Despite this, the Petitioners chose to institute R.A.E. & R. Suit No.397/3107 of 1978 without impleading the Respondent herein as a party in the said suit.

12. The issue as to whet her table space was allotted or not, is essentially an issue of fact. The Appellate Bench, based upon the material on record, has recorded a finding that the license was not in respect of some table space, but rather the same was in respect of a distinct portion of the suit premises being Room No.9A. The averment in the Petitioner No.3's affidavit dated 13/02/2003 also establishes that the suit premises were partitioned in the year 1970 i.e. prior to the cut off date of 01/02/1973 and a distinct portion was in occupation of the Respondent. In these circumstances, there is no reason to disturb the finding of facts recorded by the Appellate Bench. The findings of fact cannot be described as being perverse or contrary to the weight of evidence on record. There is no substance in the contention that there was no agreement subsisting on the cut off date of 01/02/1973. Section 14 of the said Act provides that certain sub-tenants and licensees shall become tenant on determination of tenancy. Sub-Section 2 of Section 14 provides that where the interest of a licensor, who is a tenant of any premises is determined for any reason, the licensee who by Section 15A is deemed to be a tenant, shall, subject to the provisions of the said Act, be deemed to become a

tenant of the landlord on the terms and conditions of the agreement consistent with the provisions of the said Act. Section 15A of the said Act which begins with a non-obstante clause, provides that notwithstanding anything contained elsewhere in the said Act or anything contrary in any other law for the time being in force, or in contact, where any person is, on the first day of February 1973 in occupation of any premises, or part thereof which is not less than a room, as a licensee, he shall on that date be deemed to have become, for the purpose of this Act, the tenant of the landlord, in respect of the premises or part thereof, in is occupation.

13. The Hon'ble Supreme Court, in the case of *Bhailal Hukamchand Shah Versus Narandas Shamji (supra)*, upon the analysis of the provisions contained in Section 14(2) and 15A of the said Act, has made the following observations in para 7 :

“7. Against the order the appellants preferred an appeal which was heard by a Bench of the Small Causes Court, Bombay. The Appellate Court also opined that the appellants were not in exclusive possession of the suit premises under a subsisting licence prior to 1st February 1973 and that the tenant was not entitled to grant any such exclusive possession in the face of the interim injunction of the Court. In this view that it took the appeal was dismissed.”

14. In the present case, there is really no dispute that the original tenant in respect of the suit premises was Shri Khanchand Hasharam. There is material on record that the said Shri Khanchand Hasharam, in the year 1953 or thereabouts, had inducted the father of the Respondent as the licensee in respect of a portion of the suit premises being Room No.9A. There is also material on record that by the year 1970, the portion of the suit premises in occupation of the Respondent had been duly partitioned and such portion therefore can be regarded as part of the suit premises which is not less than a room as contemplated by Section 15A of the said Act. On basis of such facts and circumstances, the Appellate Bench of the Small Causes Court cannot be said to have exceeded its jurisdiction or in the exercise of its jurisdiction, acted illegally or with material irregularity in making the impugned Judgment and Order. Accordingly, no case is made out to interfere with the impugned order in exercise of the revisional jurisdiction.

15. For the aforesaid reasons, this Civil Revision Application is dismissed. Interim order, if any, to stand vacated. There shall be no order as to costs.

(M. S. SONAK, J.)