

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

CIVIL REVISION APPLICATION NO. 335 OF 2014

Ramesh Dwarikaprasad Pandey ..Applicant

Vs.

Ramchandra Ramsahaj Mishra ..Respondent

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Mr. Milan Desai, Advocate i/b T.R. Patel for Applicant.

Mr. R.R. Sharma, Advocate 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 dated 9 January 2014 passed by the Appeal Bench of the Small Causes Court, Bandra directing the eviction of the applicant from the suit premises.

2. The respondent filed R.A.E. Suit No. 593/2004 in the Small Causes Court on the ground of arrears of rent and bonafide requirement and that the applicant was not occupying the premises for a period of six months prior to institution of the suit. The suit was filed on 9 July 2004. The suit premises are situated at Poisar, Kandivali (E), Mumbai.

3. According to the respondents, the applicant was not using the residential room which was let out to the applicant and it was kept locked. It was further contended by the respondent that the applicant was in arrears of rent, and a defaulter. Written statement was filed by the applicant contesting the claim of the respondent. It was contended that the applicant was paying the monthly rent regularly and he had occupied the premises, and the allegation that it was not put to use was not correct. The other grounds of eviction asserted by the respondent-landlord were also denied.

4. The learned Small Causes Court Judge framed issues as regard the non-user and also applicability of Section 22 of the Maharashtra Slum Areas Act, default and whether the premises were reasonably and bonafide required by the respondent. The parties led their oral and documentary evidence. The learned Small Causes Court Judge considered the evidence on record and the arguments of both the sides. As regard the finding as to the applicability of the Slum Act, the learned Judge held the same in the negative. The learned Judge held that the claim of the respondent reasonable and bonafide requirement, could not be granted. The learned Judge however directed that the respondent was entitled to the decree on the ground of arrears of rent. As regard the issue of non-user, the learned Judge held in favour of the applicant. Accordingly, the learned Small Causes Court Judge by it's order dated 3 May 2008 decreed the suit and directed the applicant to hand over the possession to the respondent.

4. The applicant thereafter filed an Appeal no. 165/2008 in the Appeal Bench of the Small Causes Court, Bandra, Mumbai. The appeal was filed on 12 June 2008. There was a delay in filing the appeal. The applicant could not obtain the stay of the impugned judgment and decree passed by the learned Small Causes Court Judge and the respondent took possession of the property and currently the property is in possession of the respondent.

5. The learned Appeal Bench framed the issue and considered the arguments of both the sides. The appeal bench held that the respondent proved that the applicant was not using the suit premises continuously for more than six months preceding the date of the suit without any reasonable clause. The Appeal Bench accordingly confirmed the judgment and decree directing the applicant to handover the possession however on a different ground i.e. of non-user. This order has been impugned in the present revision application.

6. I heard learned Counsel for both the parties. The question what arises in this revision is whether finding of Appeal Bench that the applicant has not used the premises for a period more than six months preceding the institution of the suit, can be termed as perverse or without jurisdiction. The learned Small Causes Court Judge while holding in favour of the applicant on the issue of non-user has discarded the evidence led by the respondent.

Oral evidence was of one person residing close-by. Electricity connection and telephone connection for the relevant period was cut off and also that the name of the applicant did not appear in the voters list. The evidence of the concerned persons to prove these facts were also taken on record. The learned Trial Judge considered each evidence separately and found that the factum of non user was not proved. The disconnection of the electricity and telephone connection was brushed aside as vague. The evidence of the neighbour was brushed aside on the ground of hearsay evidence and the learned Trial Judge accordingly did not accept the case of the respondent. The Appeal Bench however rightly took into consideration all these facts cumulatively and drew an inference of non-use which was required to be drawn from these facts when established.

7. The Appeal Bench took into consideration that the electricity and telephone connections were disconnected by the concerned authorities. This fact was admitted by the applicant. It was also noted that the name of the applicant and family members did not appear in the voters list. The officer in charge of electoral roll of the Malad constituency was examined for that purpose. The disconnection of the telephone was also proved through the employee of the department. The neighbor who was examined deposed that the premises appeared locked. The suit was instituted in the year 2004. The applicant did not produce any electricity,

telephone or cooking gas bill or any other bill to show his occupation, either in the trial Court or in the Appeal Court. The learned Counsel for the applicant submitted that he may be given opportunity to produce the documents. In revisional jurisdiction, at such belated stage this prayer cannot be accepted. As on today, there is nothing on record to show the occupancy of the applicant during the relevant period. The learned Counsel for the applicant has advanced submissions criticizing each piece of evidence. According to him the disconnection took place because of the financial difficulties and the mere fact that in the voters list name does not appear does not mean that the applicant is not residing. It is not possible to appreciate the submission in absence of any material produced by the applicant. Cumulative effect of the evidence must be taken into consideration. The applicant does not have even a single document in his possession for the relevant period. The inference drawn by the Appeal Bench on the basis of these circumstances cannot be said to be perverse. There being no error of jurisdiction or perversity, it is not possible to interfere in revisional jurisdiction, which is limited in nature.

8. The revision application is accordingly rejected.

(N.M. JAMDAR, J.)