

IN THE HIGH COURT OF JUDICATURE AT MUMBAI  
CIVIL APPELLATE JURISDICTION  
CIVIL REVISION APPLICATION NO.496 OF 2003

Ratnamala Venugopal Pillai and others                      ...      Applicants  
Vs.  
Kamal Joshi and another                                              ...      Respondents

Mr. C. A. Waheed with Mr. K. B. Bhamid for Applicants.

**CORAM : R. G. KETKAR, J.**  
**DATE : 7<sup>TH</sup> JULY, 2015**

**ORDER :**

Heard Mr. Waheed, learned Counsel for applicants. None appears for respondents.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), original plaintiff has challenged the judgment and decree dated 02.03.2002 passed by the learned Judge, City Civil Court, Mumbai in Short Cause Suit No.1882 of 2000. By that order, the learned trial Judge dismissed the Suit instituted by the applicant, hereinafter be referred to as the plaintiff, under Section 6 of the Specific Relief Act, 1963 (for short 'Act').

3. Plaintiff instituted Suit alleging that on 03.03.2000 at about 3.30 p.m., defendant No.1 has forcibly dispossessed the plaintiff from shop No.1 admeasuring about 10 x 15 ft made up of patra wall and G.C. sheet roof situate at ground floor, Patap Palace, J. N. Road, Near Aparna Hospital, Mulund, Mumbai 400 080 (in short 'suit premises'). It is the case of the plaintiff that he is in possession of the suit premises since 1960. Plaintiff was a monthly tenant at the rate of Rs.50/-. Respondent No.2, hereinafter be referred to as the defendant No.2, is landlord of the suit premises. Plaintiff had paid rent to defendant No.2. However, no

receipts were issued in that regard. Defendant No.2 has issued rent receipts from the month of April, 1990. Plaintiff has been regularly paying the rent from time to time. Plaintiff possesses a licence issued under the Bombay Shops and Establishments Act, 1948, electricity bills, assessment bills issued by the Corporation, bank account at Canara Bank, Mulund Branch which supports the contention of the plaintiff that he is in possession of the suit premises.

4. It is the case of the plaintiff that at the instance of the defendant No.1, Corporation had issued notice under Section 351 of the Mumbai Municipal Corporation Act, 1888. On 15.02.2000, the Ward Officer passed order directing demolition of the suit premises. Plaintiff had instituted L.C.Suit No.1380 of 2000 against the Corporation. Ad-interim relief was declined. Before plaintiff could file appeal, the suit premises were demolished on 03.03.2000. Plaintiff had lodged N.C. Complaint at Mulund Police Station on 06.03.2000. Plaintiff, therefore, instituted Suit under Section 6 of the Act and also prayed for appointment of the Court Receiver. Initially, ad-interim order restraining defendants from creating third party interest or putting any third party in possession of land admeasuring 10 x 15 ft till the disposal of the Motion was granted on 31.03.2000. C.R.A. filed against that order was dismissed by this Court with direction to the trial Court to decide the Suit within 6 months from the production of the order. The Motion was thereafter heard on 14.02.2001 and it was rejected. On 12.12.2001, plaintiff took out Chamber Summons for amending the plaint. Plaintiff thereafter amended the plaint and challenged the action of the Corporation of demolishing the suit premises. Defendants resisted the Suit by filing written statement. After considering the pleadings of the parties, necessary issues were framed. By the impugned order, the learned trial Judge dismissed the Suit as indicated

earlier.

5. In support of this Petition, Mr. Waheed submitted that after the suit premises were demolished by the Corporation, in fact, the Suit had become infructuous and the appropriate remedy for the plaintiff was to file substantive Suit challenging the notice issued by the Corporation under Section 351 of the Act, claiming declaration of tenancy rights, for recovery of possession and for reconstruction of the suit premises. However, instead of instituting a fresh Suit for claiming these and other incidental reliefs, plaintiff instituted Suit under Section 6 of the Act in which the question of title cannot be gone into. He further submitted that if liberty is reserved to the plaintiff to adopt appropriate proceedings before appropriate forum, he will not press this C.R.A. He makes this statement on the basis of the instructions of petitioner No.1 Ms Ratnamala Venugopal Pillai, wife of the original plaintiff and who is present in the Court. He has tendered photocopy of the PAN Card bearing No.AGHPV8463D of Ms Ratnamala Venugopal Pillai. The same is taken on record and marked 'X' for identification.

6. None appears on behalf of the respondents. In view thereof, C.R.A. is disposed of as not pressed with liberty to the applicant herein to take out appropriate proceedings challenging the notice issued by the Corporation under Section 351 of the Act, claiming declaration of tenancy rights, for recovery of possession and for reconstruction of the suit premises as also other ancillary reliefs. It is made clear that I have not examined the merits of the proposed proceedings to be adopted by the applicants. All contentions in that regard are expressly kept open. Rule is discharged in the aforesaid terms with no order as to costs.

**(R. G. KETKAR, J.)**