

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 324 OF 2014

Girish L. Mhatre and ors. .. Applicants

vs.

Mrs. Santa Kaur Chaddha
(since deceased through Legal Heirs
1(a) Sardar A. Singh Chaddha & ors) and anr. .. Respondents

Mr. A.S. Rao a/w. Ms Pratibha A. Borade for the Applicants.

CORAM : M. S. SONAK, J.

DATE : 02 SEPTEMBER 2015.

P.C. :-

1] This Civil Revision Application is directed against the judgments and decrees dated 7 January 2012 and 22 January 2014 made by the Trial Court and the Appeal Court ordering the eviction of the applicants from the suit premises on the ground of continuous non-user of the suit premises for more than six months prior to the date of institution of the suit.

2] Mr. Rao, learned counsel for the applicants, contended that the two Courts have only based their findings on the basis of minimal electricity bills. This according to Mr. Rao constitutes a clear perversity considering the fact that the applicant No.1 Girish was operating a 'Poli Bhaji Kendra' from Dombivali and he was required to leave the suit premises very early in the day and return quite late

in the night. Mr. Rao also contended that the suit for eviction was itself not maintainable for failure on the part of the landlords to issue a notice to terminate tenancy. Mr. Rao submitted that since the two Courts have not considered the aforesaid aspects, the impugned judgments and decrees are in excess of jurisdiction or in any case vitiated by illegality and material irregularity.

3] There is no merit in this Civil Revision Application. The two Courts have concurrently recorded the findings of fact that there was non-user of the suit premises for a continuous period of over six months prior to the date of institution of the suit and further, there was no sufficient explanation or cause furnished for the same. Perusal of the impugned judgments and decrees would reveal that the two Courts have not based their decision, merely on the ground that there was minimal user of electricity supply in respect of the suit premises. The record reveals that for the period between 14 December 2006 and 16 June 2008, i.e., for a period of almost one and half year there was no electricity supply whatsoever to the suit premises. The belated contention putforth mainly during the course of arguments that the electricity charges were not paid due to economic constraints and therefore the electricity supply was

disconnected, hardly inspires any confidence. That apart, the two Courts have considered the circumstance that the applicant No.1 was served with the summons in the proceedings at some address in Dombivali. Applicant No.1 had also attempted to set up a case that he has taken on leave and licence basis some premises in Dombivali only for the business purposes. No agreement, in this regard was however produced. Applicant No.1 also set up a case that he was a Graduate and therefore, employed with Bharat Trading Company, which had its office at Fountain, Mumbai. Again in this regard, no documents whatsoever were produced. Applicant No.1 was questioned about his Ration Card and responded by stating that he does have Ration Card. However, such Ration Card was not produced on record. The records pertaining to Gas Connection were produced, however, they pertain to the year 2011, i.e., much after the institution of the suit. Applicant No.1, in his deposition has himself stated that defendant Nos.2 to 4 (applicant Nos.2 to 4) do not reside in the suit premises. Applicant No.1 has chosen to set up various defences, which sometimes contradict each other. However, applicant No.1 has not been able to establish any of the defences. The two Courts, upon consideration of the entire material on record, have recorded the concurrent findings of fact. The findings of fact

are not vitiated by any perversity. This Court, in exercise of its revisional jurisdiction under Section 115 of the Code of Civil Procedure 1908, does not act as an Appeal Court. Accordingly, there is no case made out to interfere with the concurrent findings of fact recorded by the two Courts.

4] On the aspect of non-service of notice, it is settled position in law that such notice is not at all necessary, unless the statute particularly warrants the issuance of same. Insofar as seeking of recovery of possession on the ground of continuous non-user of the suit without sufficient cause for a period in excess of six months, which is a ground contemplated by Section 16(1)(n) of the Maharashtra Rent Control Act, 1999 (Rent Act), there is no provision for issuance of notice prior to institution of the proceedings for recovery of possession.

5] Upon cumulative consideration of all the aforesaid facts, there is no case made out to exercise revisional jurisdiction in the matter. Accordingly, Civil Revision Application is dismissed. There shall be no order as to costs.

6] At this stage, learned counsel for the applicants, prays for a stay on the execution of the eviction decree for a period of eight weeks, as the applicants desirous to take recourse against this order before the Hon'ble Apex Court. Subject to the applicants filing usual Undertaking in this Court within a period of two weeks from today, the eviction decree shall not be put into execution for a period of eight weeks from today. The Undertaking to be filed after service of copy of the same upon the respondents. The applicants to produce proof of service and file an affidavit of service alongwith such Undertaking.

(M. S. SONAK, J.)

dinesh

CERTIFICATE

“I certify that this Order uploaded is a true
and correct copy of original signed Order.”

Uploaded by : Dinesh S. Sherla
Personal Assistant to the
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