

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

CIVIL REVISION APPLICATION NO. 348 OF 2014

Sitaram Swaminath Nishad

..Applicant

Vs.

Hiraben Chandrakant Patel

..Respondent

....

Mr. Dakshesh Vyas a/w Durgesh Kulkarni, Advocates i/b Lex Firmus
for Applicant.

Mr. Sudan Amare, Advocate for Respondent.

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CORAM : N.M. JAMDAR, J.

DATED : 5 MAY 2015

P.C.:

By this revision application, the applicant challenges the judgment and decree dated 14 December 2012 passed by the Small Causes Court, Bandra, Mumbai in R.A.E. Suit No. 506/2001 and the judgment and order dated 24 March 2014 passed by the Appeal Bench of the Small Causes Court, Mumbai in Appeal No. 2(a) 2/2013 decreeing the suit filed by the respondent and directing the applicant to vacate the premises.

2. The suit premises is Room No. A-1 on Ground Floor of Patel Building situated on CTS No. 301-A, 41, Bazar Road, Bandra (W), Mumbai. The respondent filed suit against the applicant on the ground that the applicant has left Mumbai and permanently

settled at his native place where his family resides. It was also asserted that the applicant has kept the premises locked and illegally handed over key to one Jaiswal. Both the Courts, the Trial Court as well as the Appeal Bench framed the issues as regard non user and found that the case was proved by the respondent.

3. The learned Counsel for the applicant submitted that both the Courts have erred in appreciating the evidence on record and have wrongfully shifting the burden on the applicant. He submitted that even electricity bills after filing of the suit have been considered.

4. The plaintiff-respondent has averred in the plaint that the applicant has not used the premises for the specified period i.e. 1 January 2001 to 16 July 2001 without sufficient cause. The electricity bills for the year 2001 shows the consumption as nil. The consumption has shown nil even after filing of the suit. Burden had shifted on applicant to show that he was using the premises for the relevant period. It was the case of the applicant that being a carpenter he had to visit various different cities on assignment. However nothing has been produced to substantiate this case. There is no bill, voucher, details or any travel document is produced in this regard. There is absolutely no documentary evidence to show the occupation during this period, which fact even the learned Counsel for the applicant had to concede.

5. Both the Courts have analyzed the ration card, election card, identity card, passport, etc. and correctly held that none of these documents show that the applicant was residing in the premises. The family of the applicant resides at native place and it is most likely that the applicant has shifted to the native place where his family resides.

6. In absence of any contra material produced by the applicant, it is not possible to interfere with the concurrent findings of both the Courts in, revisional jurisdiction. The Revision Application therefore cannot be entertained and is rejected.

7. At this stage, the learned Counsel for the applicant seeks continuation of ad-interim order. The learned Counsel for the respondent states that the applicant has not deposited compensation since March 2014 i.e. the compensation at the rate of Rs.2,000/- per month. Accordingly, the ad-interim order is continued for period of 8 weeks from today on the condition that the applicant deposits arrears of compensation in the Registry of this Court, or if he has already deposited the compensation for the disputed period, the applicant will show the receipts thereof. If the arrears are not deposited within period of four weeks from today, the ad-interim protection shall come to an end.

(N.M. JAMDAR, J.)