

Sequeira

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

CIVIL REVISION APPLICATION NO. 704 OF 2014.

Shri Hanumant Nana Shikhare. .. Applicant
Vs.
Durgaprasad Devidin Pardeshi & ors. .. Respondents

Mr.Prashant Tikare i/b Ms Zenobia Irani, for the Applicant.
Mr.Shashikumar Jain a/w Ms.Naina Desai, for Respondents.

***CORAM: N.M.Jamdar, J.
Monday 27 April, 2015***

Oral Order :

By this Revision Application, the Applicant challenges the Judgment and Decree dated 1 April 2014, passed by the Appellate Bench of the Small Causes Court, Mumbai allowing the appeal and directing the Applicant to hand over possession of the suit premises.

2 The suit premises is shop No.6 situated on the ground floor of Pearl Mansion, 59, Acharya Dhonde Marg, Parel, Mumbai. The Respondent No.1 filed a suit seeking possession of the suit property. According to the Respondent No.1, late Kasturibai Pardeshi, who was a tenant of the suit premises, expired on 8 November 1995 and the Respondent No.1 is her nephew. The husband of Kasturibai also expired. It was his case that, by Will dated 19 March 1984,

Kasturibai appointed Respondent No.1 as an executant. It was averred that by leave and license agreement dated 16 August 1969 the suit premises were given to one M/s Trade Link, a partnership firm. The agreement continued till 12 March 1974. According to the Respondent No.1, Applicant was in illegal occupation as a sub-tenant. The Respondent No.1 sought eviction of the Applicant on the ground of permanent construction and that Respondent No.2 M/s Trade Link created illegal sub-tenancy in favour of the Applicants and was liable to be evicted. The Applicant filed Written statement and contested that the Respondent No.1 was not entitled to exercise tenancy rights and has no right conferred on him by the Will of Kasturibai. It was also contended that said Kasturibai had consented to the transfer of license in favour of the Applicant and she had executed an affidavit to that effect. The additional Written statements were also filed.

3 The learned Judge Small Causes Court, framed issues as regards the right of Respondent No.1 to institute the suit; whether Defendant No.2 was a deemed tenant of Kasturibai; and whether there was any sub-tenancy. The learned Small Causes Court also framed the issue as to whether tenancy was transferred in the name of Applicant. The learned Small Causes Court held that the Respondent No.1 was not entitled to institute the suit against Respondent No.2 Trade Link who was deemed tenant, and there was no sub-letting, as tenancy was transferred in favour of the Applicant. Accordingly, by order dated 8 August 2007, the learned Judge dismissed the suit.

4 Thereafter the Respondent No.1 filed Appeal No.546 of 2007. The Appellate Bench held that the suit filed by the Respondent No.1 was maintainable. The Respondent No.2 Trade Link had illegally assigned and parted with possession of the property to Applicant. Accordingly the Appellate Bench allowed the appeal by order dated 1 April 2014 and directed the Applicant to hand over the possession of the two rooms.

5 The first contention of the learned counsel for the Applicant is that the Applicant is the proprietor of an entity called as M/s Trade Link. He submitted that he is not aware of any such partnership with whom agreement was executed on 16 August 1989 by Kasturibai. Therefore, from his argument, it appears that the stand of Applicant is that the Trade Link in the year 1969 is different than the Trade Link with which the Applicant is associated. Further argument is that Kasturibai, on 9 August 1982 by way of affidavit transferred and assigned her rights in favour of the Applicant with the consent of the landlord. It was also urged that the main landlord had accepted the said transfer of tenancy.

6 However, the written statement filed by the Applicant needs to be noticed as the stand of the Applicant is crystalised therein. The relevant portion of the Written statement reads as under :-

“6. With reference to paras 3 and 4, the Defendants beg to point out that it is the case of the Plaintiff that the deceased Smt.Kasturibai had given the suit premises on

leave and license basis to the Defendant no.1, initially for a period of 11 months and the same was renewed from time to time till 12.3.1974 and it is also admitted fact that the said leave and licence agreement was subsisting on 1.2.1973 and as such the Defendant No.1 became deemed tenant under Section 15-A of the Bombay Rent Act. It has also come on record that the said deceased Smt.Kasturibai during her life time had transferred the business licence, electric bills and the tenancy rights in the suit premises in the name of Defendant No.2. It is pertinent to note that the original landlord had terminated the tenancy rights of Smt.Kasturibai sometime during 1978-79. She had already given away her business in the name of M/s.Tradelinks since 1969. She was not interested in the business not in the shop premises. This Defendant therefore submits that she had transferred her business and tenancy rights in favour of the Defendant no.2 and since then, this Defendants are direct tenant of the original landlord. The tenancy rights of the deceased Smt.Kasturibai were already determined and came to end at the time of her death and, therefore, the question of she bequeathing her tenancy rights in favour of the Plaintiff by will or otherwise, does not arise. It is further pertinent to note that the deceased Smt.Kasturibai has never taken any action against these Defendants during her life time and as such, the present Plaintiff has no right to file present eviction suit on any grounds whatsoever. The Plaintiff has filed present suit mischievously with ulterior motive and to harass and extract moneys from these Defendants.”

The above extracted portion of the Written Statement shows that the case is that Kasturibai's tenancy rights were terminated during 1978-1979 and she had already given away her business in the name of M/s.Trade Link since 1969 and since then, M/s Trade Link is a protected tenant under Section 15-A of the Bombay Rents,

Hotel and Lodging House and Rates Control Act, 1947. If this stand is to be accepted, there is no question of Kasturibai transferring her tenancy rights in the year 1982 as alleged, as according to the Applicant himself, her tenancy rights were terminated in the year 1978-1979. The argument of the Applicant is totally contrary to his Written statement.

7 Secondly, if M/s Trade Link was in existence since 1969, it became protected tenant by being in possession as on 1 February 1973, the Applicant must establish his connection with the said Trade Link. The Applicant has not produced any document to show that, he is connected with M/s Trade Link, which according to the Respondent No.1, was partnership firm. Even in this Court, the Applicant has not been able to show his connection with M/s Trade Link, which according to him was in existence since 1969. Unless the Applicant is able to show that he was part of the said entity, which became protected tenancy, there is no question of any rights flowing to the Applicant.

8 The Applicant has tried to take contrary stands at will to create confusion. The Applicant has taken various divergent defences, which has been commented upon by the Appellate Court. If the main agreement and the Written statement are taken into consideration then, by his own case the Applicant cannot succeed. Apart from this position, the Appellate Court has also expressed doubts about the physical condition of Kasturibai, who had suffered

a paralytic stroke, to execute an affidavit in favour of the Applicant.

9 It was then contended by the learned counsel for the Applicant that Respondent No.1 has no right to institute the suit. Respondent No.1 is the nephew of the late Kasturibai's husband, who died without any issues. Apart from this position, a Will has been executed in favour of the Respondent No.1 by Kasturibai. I have gone through the copy of the Will deed. Prima facie reading of this Will would show that it gives right to the Respondent No.1 in respect of the movable and immovable properties of late Kasturibai. It is informed that probate has also been issued in favour of the Respondent No.1. Furthermore Respondent No.1 instituted a suit for declaring him as a tenant, which has been decreed and the appeal filed by the Applicant has been dismissed. Thereafter Writ petition No.275 of 2005 filed by the Applicant is simplicitor admitted on 23 February 2005. However, there is no stay to the declaration that the Respondent No.1 is a tenant. The Applicant has not made any attempts to seek any interim order in the said petition since the year 2005. Therefore, considering the above aspects and the limited parameters of revisional jurisdiction, it is not possible to interfere with the finding of facts recorded by the Appellate Court, especially in view of the stand of the Applicant himself in the Written statement. The Civil Revision Application therefore, cannot be entertained and is rejected.

10 At this juncture, the learned counsel for the Applicant seeks

continuation of the ad-interim order. The ad-interim order is continued for a period of eight weeks from today.

(N.M.Jamdar, J.)