IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.849 OF 2014

WITH

CIVIL APPLICATION NO.317 OF 2015

Central Bank of India.] … Applicant.

Versus

Mr. Harish Dadoba Thakoor.] … Respondent

Mr. K. K. Jadhav for Applicant.
Mr. P. S. Dani, Senior Advocate, a/w Ms. Jui A. Nerurkar for Respondent.

CORAM :- M. S. SONAK, J.
DATE :- SEPTEMBER 10, 2015

P. C. :-

1. This Civil Revision Application challenges the Judgments and Decrees dated 01/10/2011 and 03/10/2013 made by the Trial Court and the Appeal Court ordering the eviction of the Applicant-Bank from the suit premises. Mr. Jadhav, learned Counsel for Applicant-Bank, reiterated the only submission which was raised before the Appeal Court namely that the Power of Attorney dated 19/06/1996, on the basis of which Mr. Prasanna Harish Thakoor (PW 1), son of the original Plaintiff, deposed in the matter, pertains to some other property and not the suit property and therefore, the

evidence of said Mr. Prasanna Harish Thakoor (PW 1) was required to be excluded from consideration. Upon exclusion of this evidence, there was really no material on record to make the impugned eviction decree. Mr. Jadhav submitted that this is an issue which goes to the root of jurisdiction and therefore, the impugned decrees should be reversed by this Court in the exercise of its revisional jurisdiction under Section 115 of the CPC.

2. Ms. Jui Nerurkar, learned Counsel for Respondent, submitted that there was no challenge whatsoever to the Power of Attorney at the stage when Mr. Prasanna Harish Thakoor (PW 1), who is incidentally, the son of the Plaintiff, made his deposition before the Trial Court. Further, such issue was never raised before the Trial Court. The issue was raised for the first time before the Appeal Court and the Appeal Court has dealt with the same in accordance with the law. The Appeal Court, has rightly construed the provisions of the Power of Attorney and rejected the hyper-technical objection raised by the Bank. There is absolutely no jurisdictional error in the making of the impugned eviction decrees and therefore, this Court may not interfere with the same.

3. Having heard the learned Counsel for parties and perused the material on record, there is indeed no jurisdictional error in the making of the impugned eviction decrees. Accordingly, no case is made out to exercise the revisional jurisdiction under Section 115 of the CPC.

4. Before adverting to the only contention raised by Mr.Jadhav on behalf of the Applicant-bank, it is necessary to note in the present case, in terms of Section 3 (1)(b) of The Maharashtra Rent Control Act, 1999 ('Rent Act'), the protection of the Rent Act is not available to any premises let or sub-let to banks. The explanation to this section makes it clear that the expression "bank" means a bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980. The expression also includes any other bank, scheduled bank as defined in clause (e) of Section 2 the Reserve Bank of India Act, 1934. There is no dispute whatsoever in the present case that the Applicant-Bank, in the present case, answers the definition of the expression "bank" as employed in Section 3(1)(b) of the Rent Act. Therefore, there is no dispute that the Applicant-Bank, in the present case, is not entitled to claim the benefits or protection under the Rent Act.

5. There is also no dispute, as recorded by the Trial Court as to the relationship of landlord and tenant. The Applicant is admittedly the tenant in respect of the suit property of which the Respondent is the landlord. There is also no dispute that lease term which was constituted by a written document has expired by efflux of time. There is also no dispute that in any case, the tenancy is validly terminated by issuance of a notice of termination. In fact, the Appeal Court has recorded that the learned Counsel for the Applicant-Bank before the Appeal Court did not challenge the findings recorded by the

Trial Court regarding termination of tenancy vide notice dated 09/08/2008. There is really no dispute with regard to the receipt of notice of termination dated 09/08/2008, because such notice was even responded to by the Applicant-Bank on 23/09/2008. In these circumstances, at least on merits, there is really no ground to interfere with the eviction decrees. In fact, none were even raised in this petition.

6. The only ground which therefore arises for consideration is whether the Power of Attorney dated 19/06/1996 indeed authorized Mr. Prasanna Harish Thakoor (PW 1) to depose on behalf of his father, the Plaintiff, who had instituted the suit for eviction in matter pertaining to the leased premises. Further question which arises is whether the impugned decrees stand vitiated, on account of some defect in the Power of Attorney on the basis of which Mr.Prasanna Harish Thakoor (PW 1) has deposed in the matter. The Appeal Court, has considered and answered these issues against the Applicant-Bank and there is really no jurisdictional error as such in the decision of the Appeal Court.

7. The Power of Attorney dated 19/06/1996 (Exh.12) was issued by the landlord-Plaintiff in favour of his son Mr. Prasanna Harish Thakoor (PW 1). The Power of Attorney authorizes the said son to do all acts regarding judicial and non-judicial acts relating to property known as Plot Nos.192/193, Gokhale Road, Dadar (West), Mumbai - 400 028. In clause 2 of the Power of Attorney, however, the

Plaintiff has described himself as the absolute owner and landlord in respect of the property known as Plot Nos.192/193, Gokhale Road, Dadar (West), Mumbai - 400 028, adjacent to Central Bank of India, Dadar (West), Mumbai - 400 028. It is on the basis of the expression '*adjacent to Central Bank of India*', Mr. Jadhav contends that the Power of Attorney pertains to some property other than the property which has been let out to the Applicant-Bank.

8. The aforesaid contention cannot be accepted for several reasons. In the first place, the Power of Attorney very specifically authorizes Mr. Prasanna Harish Thakoor (PW 1) to do all acts regarding judicial or non-judicial relating to the property known as Plot Nos.192/193, Gokhale Road, Dadar (West), Mumbai - 400 028, which is nothing but the suit premises. This clause is most relevant when it comes to examining the authority of the Attorney and insofar as this clause is concerned, there is no ambiguity whatsoever. Secondly, no defence was raised in the written statement, or for that matter in the course of examination of PW 1. If, during the course of cross-examination of PW 1, any questions were to have been put up to him in this regard, the matter could have been explained. In case, if the ambiguity was of any serious nature, which in this case it was certainly not, it was always open to the Plaintiff to produce some corrected Power of Attorney or for that matter, to even ratify the deposition of his son in pursuance of the Power of Attorney. However, there was no challenge whatsoever on this ground in the course of cross-examination. The Trial Court's Judgment an Decree also records

no submission whatsoever in the context of challenge which was raised before the Appeal Court. This is yet another reason as to why the contention on behalf of the Applicant-Bank deserves no acceptance. Thirdly and most importantly, there is absolutely no evidence of even suggestion to indicate that the Plaintiff owned some other property adjacent to the Central Bank of India and that Power of Attorney was therefore not relating to the property let out to the Applicant-Bank. Both the parties were *ad idem* that the Plaintiff owns property which was let out to the Bank and the Power of Attorney was in respect of very same property. In such circumstances, it is hardly open to the Applicant-Bank to make a mountain out of a molehill on account of the expression '*adjacent to the Central Bank of India*'. The expression was obviously employed to indicate the location of the suit premises. On the basis of some trivial inaccuracy in the terminology employed by the parties, it is not permissible to attack the decrees made by the two Courts which, on merits, are not even being impeached by the Applicant-Bank. In any case, the jurisdiction under Section 115 of the CPC is not required to be exercised for such parties.

9. Further, it is to be noted that this is not a case where the Plaintiff has alleged that his Attorney has misused the power or has purported to exercise the power in respect of the property which was not at all the subject matter of the document creating the Power of Attorney. In this case, it is the Applicant-Bank which is seeking to raise such a hyper-technical and alleged defect in the phraseology employed in the document. This is clearly impermissible. In any case,

as noted earlier, the Power of Attorney authorized Mr. Prasanna Harish Thakoor (PW 1) to do all acts with regard to the suit property itself. Therefore, if the operational clause of the Power of Attorney is taken in to consideration, there is hardly any infirmity on the part of the Trial Court or the Appeal court in taking into consideration the deposition of Mr. Prasanna Harish Thakoor (PW 1).

10. The matter can be viewed from yet another perspective. In this case, since the matter proceeds mainly on the documentary evidence, there was absolutely no necessity for the Plaintiff himself to step into the witness box. Any person, with knowledge of the relevant facts could have always deposed by and on behalf of the Plaintiff. In this case, Mr. Prasanna Harish Thakoor (PW 1) was the son of the Plaintiff. PW 1 obviously had full knowledge of the relevant facts and circumstances pertaining to the case. In fact, there was really no dispute with regard to the material facts which offered cause of action to the Plaintiff. Therefore, even the deposition of PW 1 is considered *de hors*, his capacity as Power of Attorney for the Plaintiff-landlord, the same was sufficient to sustain the decree of eviction.

11. For all the aforesaid reasons, no case is made out to entertain the present Civil Revision Application. The same is dismissed. There is, however, no order as to costs.

12. However, considering that the Applicant in the present case is a nationalized bank, the decree of eviction shall not be

executed for a period of 12 (Twelve) weeks from today. This is subject to the Applicant-Bank filing in the Registry of this Court within a period of two weeks from today, the usual undertaking with regard to their being in possession of the suit premises and not creating any third party rights therein or parting with the possession thereof. Copy of such undertaking to be furnished to the learned Counsel for Respondent-landlord, before the same is filed in the Registry.

13. Further, for the period of 12 (Twelve) weeks, the Applicant-Bank to continue to pay compensation at the rate of Rs.1,80,000/- (Rupees One Lac Eighty Thousand Only) per month as per the interim arrangement.

14. Since the Civil Revision Application is disposed of, Civil Application does not survive and the same is also disposed of.

(M. S. SONAK, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed Order.