IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.333 OF 2015

Shri. Mahesh Ramesh Mehta .. Applicant

Versus

Shri. Navinbhai Bholanath Pandya .. Respondent

Mr. R. S. Patil, for the Applicant.

CORAM : R.M. SAVANT, J.
DATE : 16th NOVEMBER, 2015

P.C.

1. There is a concurrent finding recorded by the Courts below as regards the Applicant's/Landlord's entitlement to a decree on the ground of arrears of rent and nuisance. Both the Courts below on the basis of the material which has come on record have negatived the two grounds on which decree had been sought by the Applicant/original Plaintiff.

2. The Respondent No.1 herein is a tenant in respect of a premises in Mehta Building which was owned by the family of the Applicant. It appears that pursuant to a family settlement, the properties of the said family came to be partitioned between the various family members and in so far as the building wherein the suit premises are situated, it is the case of the Applicant/Plaintiff that the said building

came to his share. It appears that the Applicant's uncle one Harihar H. Mehta filed a Trust Petition No.4 of 1999 in this Court for revocation of the trust by challenging the family settlement and sought the transfer of the trust property mentioned in the family settlement. It appears that certain orders came to be passed in favour of the said Harihar Mehta, pursuant to which he addressed letters to the tenants of the building in question as Constituted Attorney of his aunt asking them to pay rent to him directly. Since the Respondent herein was according to the said Harihar Mehta in arrears of rent, a notice dated 4-7-2002 came to be addressed to him through advocate Dorajiwala by the said Harihar Mehta calling upon the Respondent herein to pay the arrears of rent. The Applicant it seems got wind of the said notices addressed by the said Harihar Mehta pursuant to which the Applicant filed a Trust Petition No.2 of 2002, wherein he sought to bring on record the factum of the Deed of Settlement which took place amongst the family members. In the said Trust Petition No.2 of 2002, the family settlement was upheld by this Court and the Applicant was declared as owner/landlord of the suit premises and the said Harihar Mehta was directed not to make any claim in respect of the suit premises.

3. The Applicant thereafter filed a suit for eviction against the Respondent on the ground of arrears of rent and nuisance being RAE & R

Suit No.1269/2096 of 2002. The arrears of rent were for the period 1-10-2000 to 31-5-2002 amounting to Rs.4263/-. The stand taken by the Respondent/Defendant in the said suit was that he had not received any notice from the Applicant and that it was further his contention that he was not in arrears as he has paid the amount personally on the receipt of the notice from advocate Dorajiwala. It was the case of the Defendant that the receipt of the said amount of arrears was acknowledged on a xerox copy of the said notice addressed on behalf of the said Harihar Mehta. The said fact was admitted by Harihar Mehta in his evidence. It appears that during the trial the Respondent sought to lead secondary evidence in respect of the said notice which was a xerox copy on which the alleged endorsement was made by the said Harihar Mehta of having received the amount of arrears of rent. The Trial Court had granted permission to the Defendant to lead secondary evidence. Pursuant to which the Defendant led secondary evidence in respect of the said xerox copy of the notice dated 4-7-2002 and the endorsement made thereon. The Trial Court after such exercise being carried out held that the loss of the said document was accounted for and that the said document was proved by way of secondary evidence by the Respondent. It is on the said basis that the Trial Court came to a conclusion that the ground of arrears of rent is not proved against the Defendant/tenant. The Trial Court also rejected the ground of

nuisance sought to be urged on behalf of the Plaintiff. The matter was carried in Appeal by the original Plaintiff i.e. Applicant herein by way of Appeal No.31 of 2011. The Appellate Bench of the Small Causes Court reiterated the findings of the Trial Court in so far as the payment of the arrears is concerned and accordingly by judgment and order dated 26.02.2015 dismissed the Appeal. The ground of nuisance was also negatived by the Appellate Court as was done by the Trial Court.

4. In so far as the ground of nuisance is concerned, the Learned Counsel for the Applicant fairly conceded that the Applicant would not press the ground and it is the ground of arrears of rent which is pressed in the instant Civil Revision Application. It is the submission of the Learned Counsel for the Applicant that the Respondent/tenant has not proved that payment was made to the Applicant/landlord as regards the arrears of rent and therefore the decree was required to follow. As indicated above, both the Courts below have on the basis of the endorsement made on the xerox copy of the notice dated 4-7-2002 issued on behalf of the said Harihar Mehta through his advocate Dorajiwala have come to a conclusion that the Defendant/tenant was not in arrears of rent having paid the rent to the said Harihar Mehta who was prior to the family settlement a co-owner of the suit premises. The said payment was sought to be questioned on behalf of the Applicant by contending that payment to a wrong person

would not absolve the tenant from the rigors of the operation of the act in so far as eviction on the ground of arrears of rent is concerned. In the said context, it is required to be noted that the said Harihar Mehta is the uncle of the Applicant who was admittedly a co-owner prior to the family settlement taking place and who had filed Trust Petition No.4 of 1999, wherein he had obtained certain orders pursuant to which he had asked the tenants to pay the rent to him. There is also no dispute about the fact that the said Harihar Mehta was managing the property prior to the family settlement taking place. It is much after the year 2002 that the Applicant in his own Trust Petition being No.2 of 2002 got the thing set right by seeking an order upholding the family settlement by order dated 08.09.2003. The tenant is not expected to know as regards the interse dispute between persons claiming to be landlords and since the document i.e. the notice in question with the endorsement on which the Defendant/tenant placed reliance has been held to be proved by the Courts below, by virtue of which document the case of the Plaintiff against the tenant of arrears of rent falls, in my view, the concurrent orders passed by the Courts below do not suffer from any error of jurisdiction or any other illegality or infirmity for this Court to interfere in its Revisionary Jurisdiction. The Civil Revision Application is accordingly dismissed.

[R.M. SAVANT, J]