

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 108 OF 2005

Suresh Kashinath Sane	..	Petitioner
VS.		
Vasant Pandurang Raj & Ors.	..	Respondents

Mr. R. A. Thorat - Senior Advocate i/b. Mr. P. J. Thorat for
Petitioner.
Mr. Sachin Dhakephalkar for Respondents.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 09 APRIL 2015

Date of Pronouncing the Judgment : 10 JUNE 2015

JUDGMENT :-

1] This revision petition is directed against the judgment and order dated 6 June 2005 made by the Bombay City Civil Court dismissing the petitioner's short cause suit no. 4902 of 2002 instituted under Section 6 of the Specific Relief Act, 1963 (said Act).

2] As against any judgment and order under Section 6 of the said Act, the legislature has not provided for any appeal. However, the remedy of revision under Section 115 of the CPC is not barred. In the exercise of revisional jurisdiction however the parameters prescribed under Section 115 of the CPC, shall have to be adhered to. Interference, under Section 115 of the CPC is permissible in a case which has been decided by any Court subordinate to the High

Court and in which no appeal lies therefrom, and if such subordinate court appears to have exercised the jurisdiction not vested in it by law, or failed to have exercised the jurisdiction so vested, or to have acted in the exercise of its jurisdiction illegally or with material irregularity. In the present case the complaint is not really that the trial Court has exercised a jurisdiction not vested or failed to exercise jurisdiction, so vested. The question, which therefore falls for determination is whether the learned trial Judge, in making the impugned judgment and order, has acted, in the exercise of its jurisdiction, illegally or with material irregularity.

3] It is the case of the petitioner - plaintiff that he was inducted in the premises i.e. Flat No.G-1, Raj Building, Chembur (suit premises) in or about the year 1970 as a tenant against monthly rent of Rs.100/-. It is further the case of the petitioner - plaintiff that on 6 July 2002, when the petitioner and his family members went to Jejuri for a religious ceremony, the respondents, who are admittedly the landlords of the suit premises, effected unlawful entry into the suit premises, thereby ousting the petitioner and his family members therefrom. On 9 July 2002, consequent upon the petitioner's return, there was some altercation between the parties, which required the petitioner to lodge a police complaint. The suit under Section 6 of the said Act came to be instituted on 4

September 2002, which has since been dismissed by the impugned judgment and order.

4] The learned trial Judge has disbelieved the case of the petitioner with regard to their possession and instead, has accepted the case of the respondents that the petitioner, upon acquisition of alternate premises at Thane some time in the year 1994, had surrendered the possession of the suit premises and had shifted residence at Thane.

5] Mr. Thorat, the learned Senior Advocate for the petitioner submitted that it is inconceivable that a tenant would surrender possession of suit premises, without any documentary evidence. Besides, by reference to certain documents, including *inter alia* the ration card as well as documents relating to supply of gas, the learned Senior Advocate submitted that such documents were more than adequate to establish the petitioner's possession qua the suit premises and the onus lay heavily upon the respondents to establish the manner in which they came into possession of the suit premises, after the suit premises were admittedly leased to the petitioner since the year 1970. Mr. Thorat submitted that the learned trial Court, in exercise of its jurisdiction, has acted illegally and with material irregularity thereby warranting interference with

the impugned order.

6] Considering the limited scope of interference in revisional jurisdiction, this is not a case which warrants interference with the impugned judgment and order. The learned trial Court has quite exhaustively dealt with and appreciated the material on record, which comprises *inter alia* oral as well as documentary evidence. On basis of such analysis, the learned trial Court has recorded a conclusion that the relation between the parties being cordial, the respondents had permitted the petitioner to use the suit premises, without any agreement to payment of any specific rent. In the year 1994, the petitioner's wife, who is a teacher employed in Bombay Municipal Corporation School, acquired alternate premises in Thane. Consequently, the petitioner and his family members, from the year 1994 or thereabouts, had shifted residence to Thane by surrendering the suit premises to the respondents, who are admittedly the owners thereof. The respondents thereafter, had rented a portion of the suit premises to a bank and thereafter to the respondent no. 6. Thus, on the basis of analysis of the material on record, the learned trial Judge has recorded a conclusion that the petitioner failed to establish his possession in the suit premises and consequently no case was made out for grant of any relief under Section 6 of the said Act. As noted earlier, it cannot be said that the

learned trial Court, in exercise of jurisdiction has acted with illegality or with any material irregularity.

7] Although, Mr. Thorat is right in his submission that once the induction of a person in the premises is admitted, the recovery of possession has to be normally established by the person claiming such recovery. In the present case however it cannot be said that the respondent - owner has failed in the discharge of such onus. There is no clear material that the petitioner was inducted in the suit premises as a tenant against payment of monthly rent of Rs.100/-. In fact, the petitioner has failed to produce any material on record indicating the payment of any amount at all to the respondent - owner from 1995. There is no material produced by the petitioner with regard to payment of electricity charges, either directly to the electricity supply company or to the respondents - owners. If indeed, there was no surrender and the petitioner continued in possession of the suit premises upto July 2002, then it was reasonable to expect that the petitioner would have produced material towards payment of rent as well as electricity charges qua the suit premises. Apart from the aforesaid, there are certain other circumstances, which support the case of the respondent - owner with regard to surrender as well as shifting of residence to Thane.

8] The telephone land-line came to be shifted from the suit premises to the premises at Thane in the year 1995. The petitioner, closed his bank account in Chembur and has opened a new bank account at Thane. Both these circumstances, indeed, support the case of the respondent - owner that the petitioner and his family members had shifted their residence to Thane. The ration card, upon which considerable reliance was placed by Mr. Thorat appears to have been obtained by the petitioner after the filing of the suit. There is no reference to any ration card prior to the filing of the suit. The petitioner, has produced on record identity card of his son indicating the address of the suit premises. This by itself, is by no means conclusive. Further, the petitioner failed to produce any identity card concerning himself or his wife, despite the petitioner's case that his son lives with his mother at Thane. The documents from the gas company also do not inspire any confidence, particularly if compared with similar documents produced by the respondents - owners. The gas bills produced by the respondents - owners are computerized, bear bill numbers and other details, which are normally expected upon such bills. In contrast, the bills produced by the petitioner are hand written bear no number or other details. In such circumstances, it cannot be said that the learned trial Judge has exercised jurisdiction illegally or with any material irregularity.

9] The learned trial Court has also made reference to certain other documents like the invitation card for petitioner's daughter's wedding as well as the documents emanating in the handwriting of the petitioner's wife. The wedding invitation card states the residence of the petitioner as Thane. The petitioner's wife had submitted a project report for binding and had indicated her address at Thane, in her own handwriting, whilst she continued to serve in the school at Chembur.

10] Upon the cumulative consideration of the material on record, it cannot be said that the learned trial Judge, in making the judgment and order, has acted, in exercise of its jurisdiction, illegally or with any material irregularity. This is not a case where the conclusion recorded can be said to be based upon no evidence or inadmissible evidence. This is also not a case where it can be said that there is any perversity in the record of findings. Re-appreciation of the material on record is ordinarily not an exercise to be undertaken in revisional jurisdiction. The errors contemplated under clause (c) of Section 115 of the CPC may relate either to breach of some provision of law or to material defects of procedure affecting the ultimate decision. The words "*acting illegally*" mean acting in breach of some provision of law and the words "*acting with material*

irregularity” mean committing some error of procedure in the course of trial which is material in that it may have affected the ultimate decision. Applying such tests, no case is made to interfere with the impugned order in exercise of revisional jurisdiction, particularly since proceedings under Section 6 of the said Act are summary in nature and the provisions contained under Section 6(4) of the said Act do not bar any party from instituting a regular suit for declaration of title and possession.

11] Accordingly, there is no case made out to interfere with the impugned order in exercise of revisional jurisdiction. Civil Revision Application is accordingly dismissed. Rule is discharged. There shall be no order as to costs.

(M. S. SONAK, J.)

Chandka