

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

CIVIL REVISION APPLICATION NO.717 OF 2014

Tiao Wei Liang

.. Applicant

Versus

Mrs. Meena Lal Kodumal Chanchlani

.. Respondent

Mr. Jaydeep Deo, for the Applicant.

Mr. C. G. Gavnekar a/w Mr. S. S. Deokar, for the Respondent.

CORAM : R.M. SAVANT, J.

DATE : 9th DECEMBER, 2015

PC.

1. The concurrent decree passed by the Courts below under Section 16(1)(k) of the Maharashtra Rent Control Act, 1999 (for short “the said Act”), is taken exception to by way of the above Civil Revision Application. The Applicant herein is the original Defendant and the Respondent herein is the original Plaintiff/ landlord who had filed the suit in question. The said suit was preceded by two notices to quit which were issued by the Plaintiff. However, in the context of the present Civil Revision Application, what is significant to note is that the said notices were not received by the Defendant, but the second of the said two notices were ultimately replied to by the Constituted Attorney of the Defendant. The Trial Court apart from passing the decree under Section 16(1)(k) of the said Act as also decreed the suit on other grounds by recording

findings in respect thereof. In Appeal, the decree on the other grounds has been set aside, however, the decree under Section 13(1)(k) i.e. ground of continuous non-user for the preceding six months prior to the filing of the suit has been confirmed by the Appellate Bench of the Small Causes Court, Mumbai.

2. In so far as the ground of non-user is concerned, the Plaintiff led evidence in support of the said ground. It has come in the evidence of the Plaintiff that on a visit made by her in the year 2007 she found the servants of the Defendant sitting in the suit premises. Though it was the case of the Defendant as stated in the Written Statement that the nephew of the Defendant is residing in the suit premises. Significantly the evidence of the nephew was not adduced resulting in the case of the Defendant that the premises were being used by the nephew being rejected by the Trial Court. In so far as the Defendant is concerned, it has come on record through his evidence that he has migrated to Canada and has become a citizen of Canada. However, his attempt to renege from the said evidence by stating that the climatic conditions in Canada did not suit him and he had returned was not countenanced by the Trial Court who observed that though it is the case of the Defendant that the climate in Canada does not suit him, he has admittedly not occupied the suit premises for the period between January 2007 to December 2007. The Trial Court also observed

that the evidence by way of electricity bills would not aid the Defendant to get over the said ground of non-user especially in the teeth of his own evidence that he has migrated to Canada. The Trial Court has also referred to the judgments cited on either side in respect of the ground made out under Section 16(1)(k) and has come to a conclusion that the said judgments would not aid the defence of the Defendant that there has been no non-user of the suit premises in the preceding six months prior to the filing of the suit which was filed in December 2007.

3. The decree passed by the Trial Court was carried in Appeal by the Defendant. The Lower Appellate Court as can be seen from the impugned judgment and order has confirmed the finding recorded by the Trial Court as regards non-user and has accordingly confirmed the decree passed on the said ground. However, as indicated above, has set aside the decree which was passed on the other grounds by the Trial Court. In so far as the judgments which were cited before the Lower Appellate Court are concerned, the Lower Appellate Court as can be seen from the impugned judgment and order has referred to the conspectus of judgments which were cited before it including the judgment reported in 1988(2) Bom.C.R. 588 in the matter of The Special Land Acquisition Officer Vs. Municipal Corporation of Greater Bombay, where it has been held that in respect of conflict between two decisions of co-equal Benches Courts

must follow the judgment which appears to them to state law accurately. The Lower Appellate Court has exhaustively referred to the case of the Defendant and the evidence of the Defendant and has come to a conclusion that the Defendant has not been able to rebut the evidence of the Plaintiff that he is not residing in the suit premises for the preceding six months prior to the filing of the suit. In fact, the Lower Appellate Court has confirmed the finding of the Trial Court that there has been a non-user of the suit premises from January 2007 to December 2007. Hence, as indicated above, there is a concurrent decree passed by the Courts below under Section 16(1)(k) of the said Act.

4. The Learned Counsel appearing on behalf of the Revision Applicant Mr. Jaydeep Deo would contend that the instant case cannot be said to be a case of complete non-user as the evidence of the Plaintiff itself suggests that the servants were found in the suit premises. The Learned Counsel by contending that since there is a divergence of views between the Learned Single Judges of this Court as regards whether Section 16(1)(k) would be attracted if there was a user by a person other than the tenant, sought a reference to be made to a larger bench.

5. Per contra, the Learned Counsel appearing on behalf of the Respondent/Plaintiff would contend that in the facts of the present case, where admittedly there is a non-user between January 2007 till December

2007 by the tenant which finding has been recorded by the Courts below the divergence of views between the Learned Single Judges of this Court on the point of whether there has to be a complete non-user to attract Section 16(1)(k) would not come to the rescue of the Applicant. The Learned Counsel would contend that though it is the case of the Defendant that the nephew was in occupation, significantly the evidence of the said nephew has not been adduced and hence what remains is the evidence of the Plaintiff that the servants were found in the suit premises, when she visited the suit premises in the year 2007.

6. Having heard the Learned Counsel for the parties. In my view, there is no merit in the above Civil Revision Application. There is also no warrant to make a reference to a larger bench in view of the divergence of views between the Learned Single Judges of this Court as the said judgments would have no application in the facts of the present case. This is not a case where the user by any other person is proved. In fact the evidence of the nephew who is supposed to be using the premises has not even been adduced. The Courts below have therefore recorded a finding of fact that there is a non-user from January 2007 till December 2007 by the Defendant. The fact that the Plaintiff stated that the servants were found in the suit premises would not aid the Defendant from getting over the rigors of Section 16(1)(k) of the said Act. In my view, if the said

contention is accepted, the same would militate against the object of the Rent Act. In my view, therefore, no case for exercise of the Revisionary Jurisdiction of this Court is made out. The Civil Revision Application is accordingly dismissed.

7. In view of the dismissal of the Civil Revision Application, the Respondent would be entitled to withdraw the remainder of the amount lying in deposit in the Small Causes Court as also withdraw the amount which is lying in deposit in this Court which amount has been deposited pursuant to the order dated 09.10.2015 passed in the above Civil Revision Application. The Registry of the Small Causes Court is directed to expedite the withdrawal from the Small Causes Court.

8. At this stage, the Learned Counsel for the Applicant seeks stay to the decree of eviction for sometime so as to enable the Applicant to approach the Apex Court. In the facts and circumstances of the case, the said decree is stayed for a period of eight weeks from date on the condition that the Applicant deposits an amount at the rate of Rs.25,000/- per month for the period of stay and also on the condition that the Applicant files the usual undertaking in this Court within two weeks from date.

[R.M. SAVANT, J]