

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 330 OF 2015

M/s. Dattakrupa Construction & Anr. .. Petitioners
vs.
M/s. Shah Velji Karman & Co.
a proprietary concern through it's
Proprietor Shri Navin Velji
Bauva @ Shah .. Respondent

Mr. Rajesh Datar for Petitioners.
Mr. Kailas Dewal with Mr. J. M. Joshi for Respondent.

CORAM : M. S. SONAK, J.
DATE : 22 JULY 2015

ORAL JUDGMENT :-

1] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

2] This civil revision application challenges orders dated 27 May 2013 and 13 May 2015 made by the trial Court as well as appeal Court decreeing the respondent's regular civil suit no. 589 of 2003 and declaring that the respondent is entitled to get possession of shop no. 5 admeasuring 415 sq. ft. on the ground floor of the new building situated at Chendani, Naikwadi, Gokhale Road, Thane (West) constructed in place of Shridhar Bhavan building, and further for directions to the petitioners to hand over and deliver the

possession of the such shop (suit premises) to the respondent within two months from the date of the decree, as and by way of tenanted premises.

3] Mr. Datar, the learned counsel for the petitioners has basically raised two submissions in support of the civil revision application.

(A) That in the present case there were neither any pleadings nor is there any evidence which establishes that the respondent plaintiff was carrying on business with the original tenant in the tenanted premises which had been let out for commercial purposes, at the time of his death. In the absence of such pleadings or evidence, Mr. Datar contends that the respondent plaintiff does not acquire the status of '*tenant*' as defined under section 7(15)(d) of the Maharashtra Rent Control Act, 1999 ("Rent Act");

(B) The area of the tenanted premises was only 350 sq. ft. and not 415 sq. ft. as claimed by the respondent plaintiff and as decreed by the two Courts. In this regard, Mr. Datar relies upon certain admissions in the deposition of P.W. 2 Kesharben (mother of the respondent plaintiff) as also the occupancy certificate issued by Thane Municipal Corporation (TMC).

4] Mr. Kailas Dewal, the learned counsel for the respondent submitted that there are pleadings as well as evidence which establish that the respondent was carrying on business from out of the tenanted premises at the time of the demise of the original tenant. Besides, the original tenant being the father of the respondent, the respondent is even otherwise included in the definition of '*tenant*' under section 7(15)(d) of the Rent Act. Mr. Dewal also pointed out that the petitioners had instituted a counter claim seeking declaration that the respondent had breached terms of tenancy and was therefore not entitled to any relief in the suit. Such counter claim was however abandoned by the petitioners and in view of such abandonment, it was no longer open to the petitioners to question the tenancy status of the respondent. Mr. Dewal finally submitted that the tenanted premises were taken over and demolished by the petitioners who are builders and developers, in a high handed manner and now, the petitioners are making every attempt to deprive restoration of the suit premises to the respondent. Mr. Dewal submitted that the revisional jurisdiction, which is also equitable in nature, may not be exercised in favour of the petitioners in order to perpetuate such an unjust situation.

5] Rival contentions now fall for determination.

6] The expression '*tenant*' has been defined under section 7(15) of the Rent Act. In the present case, since we are concerned with status of a person as a tenant in relation to any premises, when the tenant thereof dies, particular reference is required to be made to the provisions contained in sub clause (d) of section 7(15) of the Rent Act. The text of the statutory provision reads thus:

“15) “**tenant**” means any person by whom or on whose account rent is payable for any premises and includes-

(a)

(b)

(c)

(d) in relation to any premises, when the tenant dies, whether the death occurred before or after the commencement of this Act, any member of the tenant's family, who,-

(i) where they are let for residence, is residing, or

(ii) where they are let for education, business, trade or storage, is using the premises for any such purpose, with the tenant at the time of his death, or, **in the absence of such member, any heir of the deceased tenant, as may be decided, in the absence of agreement, by the court,”**

7] The legislature, in defining the term '*tenant*' has employed the '*means and includes*' test. When a word is defined to '*mean*' something, then the interpretation is *prima facie* restrictive. However, when a word is defined to '*include*' something, then the

definition is *prima facie* extensive and illustrative. Further, a definition may be in the form of '*means and includes*' where again, the definition may be exhaustive. Further, the natural meaning of the '*means part*' of the definition is not narrowed down by the '*includes part*'.

8] In the '*means part*', tenant is defined to mean any person by whom or on whose account rent is payable for any premises. In the present case, the respondent's father expired on 25 April 1995. Since the said date, the rent in respect of the tenanted premises was paid for by the respondent and the same was duly accepted by the original landlords. This position continued without any objection or demur upto the year 2001 when the petitioners purchased the tenanted premises from the original landlords. This circumstance, is sufficient to conclude that the respondent was the tenant in respect of the tenanted premises, even prior to the purchase of the tenanted premises by the present petitioners – builders and developers.

9] The '*includes part*' of the definition '*tenant*' under section 7(15) (d) can be conveniently divided into two parts in the matter of determining the status of tenancy, when the original tenant expires. The first part provides that the term '*tenant*', in relation to any premises, when the tenant dies, would include any member of the

tenant's family, where the tenanted premises were let out for commercial purposes, was using the premises for such purpose with the original tenant at the time of his death. Second part of this definition, which is separated from the first part with the preposition 'or' as well as the expression '*in the absence of such member*' provides that the term '*tenant*' will also include any heir of the deceased tenant, as may be decided, in the absence of agreement, by the Court. The definition, therefore, includes at least two categories of persons. The first category includes member of the deceased tenant's family, who was carrying on business in the tenanted premises at the time of the original tenant's death. In the absence of any member from the first category, the second category would include any heir of the deceased tenant, as may be decided, in the absence of agreement, by the Court.

10] In the present case, though the pleadings may not be entirely satisfactory, from the reading of the plaint in its entirety, it cannot be said that there are no pleadings at all that the respondent was carrying on business from out of the tenanted premises at the time of the death of the original tenant i.e. his father, on 25 April 1995. There are averments in the plaint that the respondent was carrying on business in the suit premises without any hindrance or obstruction from the landlords until 27 September 2001. There are

pleadings as well as evidence in the form of sales tax returns, income tax returns, licences and permissions issued by the statutory authorities from time to time for undertaking business activity from out of the tenanted premises. There are pleadings as well as evidence, which establish that from the date of the demise of the respondent's father i.e. on 25 April 1995, it is the respondent who has been paying the rents in respect of the tenanted premises to the original landlords and that such rents were even accepted by the original landlords without any objection or demur at least upto the year 2001. All this material is more than sufficient to establish that the respondent was indeed carrying on business from out of the tenanted premises at the time of his father's demise and further consequent upon the father's demise, the respondent had been accepted as tenant in respect of the tenanted premises by the landlords. There is neither any perversity nor error of law apparent on face of record in the matter of concurrent record of findings of fact by the two Courts.

11] The petitioners are builders and developers, who have purchased the tenanted premises from the erstwhile landlords who had let out the tenanted premises to the respondent's father. In the written statement filed by the petitioners, there was no challenge to the status of the respondent on the ground that the respondent was

not a member of the original tenant's family carrying on business from out of the tenanted premises at the time of the demise of the original tenant. Mr. Datar however submitted that in the absence of any categorical pleadings on the part of the respondent, there was no corresponding obligation upon the petitioners to raise any such categorical defence in the written statement. This is not correct. As noted earlier, though the pleadings may not be very satisfactory, from the reading of the plaint in its entirety, there is a clear assertion by the respondent as to the status of tenancy. The respondent has also pleaded that such status was accepted by the original landlords without any demur or objection. If despite all this, the petitioners were indeed serious to put into issue the very status of the respondent as a tenant in respect of the tenanted premises, then it was incumbent upon the petitioners to have pleaded so in clear terms, in their written statement.

12] Further, in the course of record of evidence, the petitioners did not object to letting in evidence in the context of the respondent carrying on business from the tenanted premises at the time of demise of the original tenant, on the ground that such evidence was *de hors* the pleadings. The trial Court, at one stage did make observations with regard to lack of pleadings and the consequent admissibility of such evidence. To my mind, however, such

observations were not at all warranted or justified in the facts and circumstances of the present case. This is clearly not a case where the petitioners were taken by surprise for the alleged want of or the alleged vagueness in the pleadings. The pleadings as well as material on record clearly establishes that the respondent was carrying on business through the tenanted premises at the time of the death of the original tenant i.e. the respondent's father on 25 April 1995. In exercise of revisional jurisdiction, which in any case, is different and distinct from the appellate jurisdiction, there is no case made out to interfere with the said concurrent findings of fact recorded by the two Courts.

13] Even if it is assumed that the respondent had failed to plead or prove that he was the member of the original tenant's family, carrying on business from out of the tenanted premises at the time of the demise of the original tenant, the respondent is clearly covered under the second part of the definition of '*tenant*' under section 7(15)(d) of the Rent Act. There is no dispute whatsoever that the respondent is the son and therefore the legal heir of the deceased original tenant. There is also no dispute that and in any case, the respondent's mother and sisters, in the course of their depositions have not objected to the devolution of tenancy rights upon the respondent. Therefore, the respondent is clearly included

in the latter part of the definition of the term '*tenant*' under section 7(15)(d) of the Rent Act.

14] The restrictive interpretation suggested by Mr. Datar, that the expression '*tenant*' as defined under section 7(15)(d) only means the member of the deceased tenant's family who was also carrying on business, out of the tenanted premises, finds no support either in the text or in the authorities on the subject. Such interpretation, if is accepted, would render latter part of the definition which is separated from the former part with the preposition '*or*' and the expression '*in the absence of such member*' completely redundant or otiose. It is settled principle in law that every word or expression employed by the legislature is to be regarded as surplus-age or redundant. Clearly therefore, the respondent stands included in the latter part of the definition of the term '*tenant*' under section 7(15)(d) of the Rent Act.

15] Mr. Datar however placed reliance upon the decisions of this Court in the case of *Ramchandra Madhav Darunkar (Died by L.Rs.) & Ors. vs. Abdul Sattar Ismail (Deceased through L.Rs.) & Ors*¹. and *Parashram Tuljaram Belhekar (Deceased through L.Rs.) vs. Tejmal @ Kankamal Mulchand Jain (Deceased through L.Rs.)*²,

1 2006 (1) ALL MR 724

2 2007 (3) ALL MR 657

to contend that unless the member of the tenant's family establishes that he has been using the tenanted premises for the purposes for which they were let out with the original tenant at the time of demise of the original tenant, such member of the family cannot claim status of tenancy in respect of the tenanted premises. As noted earlier, such contention, completely ignores not only the '*means part*' of the definition but also the latter portion of the '*includes part*'. The decisions relied upon by Mr. Datar turn upon the peculiar facts and circumstances involved therein. The two decisions were in the context of exclusion of some of the members of the tenant's family, in preference to such member, who was actually using the tenanted premises for the purposes for which they were let out with the original tenant at the time of the demise of the original tenant. This is the reason why the said two decisions neither make any reference to the preposition '*or*' nor to the expression '*in the absence of such member*' as they appear in section 7(15)(d) of the Rent Act. In the two decisions, there was no occasion for this Court to even consider the issue which is now projected by Mr. Datar in the present case. Mr. Datar may however be right in his submission that such issue also did not squarely arise for consideration in the case of *Ajitnath Jain Shwetambar Mandir vs. Dnyaneshwar Gulabrao Kalamkar*³, though reliance has been placed upon the said decision by the appeal Court to hold that the

3 2014 (6) ABR 705

respondent is indeed the tenant in respect of the tenanted premises.

16] Sustenance can however be drawn from the observations in the case of *Tarachand & Anr. vs. Ramprasad*⁴. In this case, the Apex Court has held that the contractual tenant has an estate or property in the leasehold interest of tenancy and its heritability is an incidence of tenancy. The tenant, who continues to remain in possession even after the termination of the contractual tenancy till a decree of eviction is made against him, continues to have an interest or estate in the tenanted premises. Therefore, in the absence of any provision in the Rent Act regulating the rights of the heirs of the tenant to inherit the tenancy rights in the commercial premises after the tenant's death, tenancy rights devolve upon the heirs under the ordinary law of succession. From this, it is clear that, despite termination of tenancy, tenancy rights are heritable and the heirs of the tenant are entitled to the protection of the Act. Under the Rent Act, as it applies to the present case, this principle has found statutory recognition to the extent indicated in section 7(15)(d) of the Rent Act.

17] Similarly, in the context of the definition of the term '*tenant*' under section 5(11)(c) of the Bombay Rents, Hotel and Lodging

4 (1990) 3 SCC 526

House Rates Control Act, 1947 ("1947 Act"), the Division Bench of this Court in the case of *Rajaram Brindavan Upadhyaya & Ors. vs. Ramraj Raghunath Upadhyaya & Ors.*⁵ has held that the said provisions were not meant to supersede the right of inheritance to the tenancy vesting in the heirs on the death of the tenant under the personal law of the parties. The provisions contained in section 5(11)(c) were however amended by the Bombay Rent Act No. XXII of 1978 which entered into force on 23 October 1978. In the context of the amended provisions, the learned Single Judge of this Court in the case of *C. J. Ghadiali & Ors. vs. Z. B. Wadiwalla*⁶ held that there was complete change in law since the decision in the case of *Rajaram* (supra) and after the 1978 Amendment, it is only in the absence of member of the tenant's family residing with the tenant at the time of the death of the original tenant, that any heir of the deceased tenant acquires tenancy rights under the Rent Act. From this, it follows that under the unamended 1947 Act, the Division Bench of this Court had recognised that the provisions of 1947 Act were not made to supersede the rights to inheritance of tenancy vesting in the heirs on the death of the original tenant. Further, after the amendment, such rights shall accrue to the legal heirs of the deceased tenant, only in the absence of member of the tenant's family residing with the tenant at the time of his demise. In both

5 1977 Mh. L. J. 792

6 1981 Mh. L. J. 876

situations, therefore, devolution of the tenancy upon the heirs was contemplated, except that after the 1978 amendment, the devolution upon the heirs in accordance with law of inheritance was made subject to absence of any member of the tenant's family using the tenanted premises for the purposes for which they were let out along with the original tenant, at the time of the demise of such original tenant. Accordingly, it is not possible to accept Mr. Datar's contention that tenancy in respect of the commercial premises can devolve only upon such member of the deceased tenant's family, who was using the premises along with the original tenant at the time of such original tenant's demise. Such restrictive interpretation, as noted earlier, is neither supported by the very text of the statutory provisions, nor by the authorities upon which reliance was placed for the purpose.

18] There is also merit in the submission made by Mr. Dewal in the context of abandonment of the counter claim raised by the petitioners. The counter claim was on the basis that the respondent was a tenant in respect of the tenanted premises, but had forfeited rights to tenancy on the ground of breach of terms. Upon abandonment of such counter claim, it is really not open to the petitioners to question the status of the respondent as a tenant in respect of the tenanted premises. However, this is only an

additional ground to dismiss this CRA.

19] The dispute in the context of area of the suit premises, appears to be a clear attempt to avoid restoration of the suit premises to the respondent. In any case, there are pure questions of fact. The two Courts have deliberated upon these matters and made the decrees. In the exercise of revisional jurisdiction, it is not possible to disturb concurrent findings of fact, particularly when no perversity has been demonstrated in the record of the same.

20] During the pendency of the appeal before the District Court, the execution of the decree dated 27 May 2013 had been stayed subject to the petitioners depositing in the appeal Court an amount of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand) per month from January 2014 till the disposal of appeal. This was obviously on the basis or principles laid down by the Apex Court in the case of *Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd.*⁷ and *State of Maharashtra & Anr. vs. M/s. Super Max International Pvt. Ltd. & Ors.*⁸, though, in a slightly different context. This is a case where the landlord was seeking to deprive the tenant the use of the premises, notwithstanding direction for restoration of the same. The suit premises are commercial premises situate at Thane. Upon

7 (2005) 1 SCC 705

8 2009 (5) ALL MR 1001

detailed assessment of the material before it, the appeal Court had determined that the losses which will occasion the respondent due to deprivation of the use of the suit premises would be Rs.1,50,000/- (Rupees One Lakh Fifty Thousand) per month. As against such determination in the order dated 7 January 2014, the petitioners had preferred writ petition no. 991 of 2014, which is pending. However, now that the appeal itself has been disposed of, question arises as to whether the petitioners are required to pay the respondent compensation at the rate of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand) per month for the period during which the respondent was deprived use of the suit premises, in pursuance of the interim relief granted by the appeal Court. In my judgment, the petitioners are liable to make such payment to the respondent.

21] The respondent, despite two decrees directing restoration of possession of the suit premises in his favour, was deprived the use of the suit premises. There are allegations that the old tenanted premises were demolished by the petitioners, who are builders and developers, in a high handed manner. This may not be the stage to go into the veracity or otherwise of such allegations. However, the fact remains that old tenanted premises were demolished and in its place the petitioners have constructed a new building, in which the suit premises have been reserved. The petitioners had also given

an undertaking to the Thane Municipal Corporation that the suit premises will be allotted to the respondent in such new building, subject of course to the final determination of entitlement. Two Courts have now made decrees in favour of the respondent. The decrees, do not warrant any interference in the exercise of revisional jurisdiction. In such circumstances, the petitioners are liable to compensate the respondent for the deprivation of the suit premises at least for the period between 1 January 2014 and the date on which the petitioners actually hand over the possession of the suit premises to the respondent. The compensation shall be at the rate of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand) per month as determined by the appeal Court, particularly since such determination is both fair and reasonable.

22] In a case of this nature, exemplary costs are liable to be imposed upon the petitioners. Since last several years, the petitioners have deprived the respondent user of the suit premises and further, are bent upon making every attempt to deprive the respondent the possession of the suit premises. However, since compensation as aforesaid, is being awarded in favour of the respondent, this CRA to be dismissed, without any order as to costs. Rule is therefore discharged.

23] At this stage, Mr. Datar applies for continuation of interim relief for a period of eight weeks from today. The interim relief is continued for a period of eight weeks from today subject to the condition that the petitioner neither parts with possession nor creates any third party rights in respect of shop no. 5 having area of 415 sq. feet on the ground floor of the new building situated at Chendani, Naikwadi, Gokhale Road, Thane (West) constructed in place of Shridhar Bhavan building. The petitioners to file within two weeks from today, an undertaking that the said premises continue to be in possession of the petitioners and that the petitioners will not part with possession or create any third party rights therein. Copy of such undertaking to be furnished at the time of filing, to the learned counsel appearing for the respondent plaintiff.

24] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)