

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

CIVIL REVISION APPLICATION NO.598 OF 2015

Gopal alias Gope Hassanand Sajnani : Applicant.
Versus
Neelam Anil Desai
Nee Neelam Vishindas Rawtani & anr. : Respondents.

Mr. V A Thorat, Senior Advocate, a/w Mr. K R Parekh and Ms. Dhruti M Kapadia i/by K R Parekh & Co. for the Applicant.
Mr. Y S Jahagirdar, Senior Advocate i/by M/s. Pandya & Co. for the Respondents.

CORAM : R. M. SAVANT, J.
DATE : 17th November 2015

P.C.

1 The above Civil Revision Application is directed against the judgment and order dated 29/08/2015 passed by the Appellate Bench of the Small Causes Court at Mumbai (Bandra) by which order the Appeal in question being Appeal No.267 of 2010 came to be dismissed and resultantly, the judgment and order dated 28/09/2010 passed by the Trial Court i.e. the learned Judge of the Small Causes Court came to be confirmed.

2 The suit in question was filed under Section 41 of the Presidency Small Causes Court Act. The Defendant No.1 i.e. the Vulcan Engineer Pvt. Ltd had a leave and license agreement in its favour which was executed in the year

1969 but had expired on 31/01/1972 by efflux of time. The Defendant No.2 i.e. the Applicant herein was in the employment of the Defendant No.1 and was occupying the premises as an employee of the Defendant No.1. It appears that prior to the instant suit, a suit was filed earlier by the mother of the present Plaintiff for eviction of the Defendant No.2 on the ground of bonafide requirement amongst other grounds. It appears that the said suit came to be dismissed, however, whilst dismissing the said suit, the Trial Court i.e. the learned Judge of the Small Causes Court had rejected the case of the present Applicant i.e. the original Defendant No.2 that he has any independent right on the basis of which he is occupying the premises. Against the said dismissal, it seems that the matter was carried in Appeal by the original Plaintiff. It is during the pendency of the Appeal that the Maharashtra Rent Control Act, 1999 came into force wherein the protection of the provisions of the said Act were denied to a company whose share capital was more than Rs. One Crore. Having regard to the said provision that the instant suit came to be filed invoking Section 41 of the Presidency Small Causes Court Act for eviction of the Defendant No.2.

3 Since the issue as to whether the paid up share capital of the Defendant No.1 Vulcan Engineer Pvt. Ltd. was a contentious issue between the parties, evidence was led on the said aspect. In the said context it is required to be noted that the annual report of the said Vulcan Engineer Pvt. Ltd. was

produced by the Plaintiff and was marked as Exhibit 30 as the same was not disputed by the witness of the Defendant No.1 who was under the cross examination. It is required to be noted that the witness of the Defendant No.1 has stated in his cross examination that the paid up share capital of the Defendant No.1 is Rs.Eight Crores and Nineteen Lakhs and that the authorized capital of the Defendant No.1 is Rs.Eleven Crores. It is on the basis of the said evidence that the said document came to be marked as Exhibit-30 by the Trial Court. The Trial Court accordingly proceeded on the basis that the share capital of the Defendant No.1 was beyond the limits prescribed in the Act of 1999. The Trial Court suffice it to state decreed the suit in question by its judgment and order dated 28/09/2010.

4 The Defendant No.2 carried the matter in Appeal by filing Appeal No.267 of 2010. The Appellate Bench of the Small Causes Court on a re-appreciation of the material on record by the impugned judgment and order dated 29/08/2015 dismissed the said Appeal. Hence there is a concurrent finding recorded by the Courts below as regards the entitlement of the Plaintiff to a decree of eviction.

5 The learned Senior Counsel appearing for the Applicant Shri V.A.Thorat sought to contend that the jurisdictional aspect viz whether the share capital of the Defendant No.1 was more than Rs.Four Crores has not

been given due consideration by the Appellate Bench of the Small Causes Court. It was also submitted by the learned Senior Counsel for the Applicant that the findings recorded by in the earlier Suit would not bind the Defendants having regard to the fact that the said suit was dismissed.

6 In my view, it is not possible to accept the contention of the learned Senior Counsel for the Applicant in the light of the fact that before the Trial Court the annual report of the Defendant No.1 was proved and marked as Exhibit 30. The dispute as regards the share capital is not raised by the Defendant No.1 Company which was the original licensee but by the Defendant No.2. It is required to be noted that there is no dispute about the fact that the Defendant No.2 was the employee of the Defendant No.1 and it is in the said context that the finding recorded in the earlier suit would have to be considered though *sticto senso* may not bind the Defendant No.2 in the instant suit. In my view, the concurrent orders passed by both the Courts below do not suffer from any illegality or infirmity for this Court to interdict in its revisionary jurisdiction. The above Civil Revision Application is accordingly dismissed.

7 At this stage, the learned Senior Counsel appearing for the Applicant prays that the eviction decree may not be executed for some period of time so as to facilitate the Applicant to approach the Apex Court. In the facts and circumstances of the present case, the decree in question not to be

executed for a period of eight weeks from date on the Applicant filing the the usual undertaking in this Court within two weeks from date.

[R.M.SAVANT, J]