IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 586 OF 2015

Kala Niryat (Shop) and ors. .. Applicants
vs.
Mahn Singh Bajaj and anr. .. Respondents

Mr. P. S. Dani, Sr. Counsel i/b Ms Jui A. Nerurkar for the Applicants.
Mr. R.A. Thorat, Sr. Counsel i/b Mr. Pramesh Vakil for Respondent No.1.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 12 October 2015.
Date of Pronouncing the Judgment : 14 October 2015.

JUDGMENT :-

1. The challenge in this Civil Revision Application is to the judgment and decree dated 29 July 2015 made by the Appellate Bench of the Small Causes Court at Mumbai ordering the eviction of the Applicants from the suit premises, *inter alia,* on grounds contemplated by Section 16(1)(e) and 16(1)(n) of the Maharashtra Rent Control Act, 1999 (Rent Act).

2. Mr. P.S. Dani, learned senior advocate for the Applicants, submitted that in the present case the Small Causes Court (Trial Court) had dismissed the two suits, i.e. R.A.E. Suit No. 854/1357 of 2005 and R.A.E. Suit No. 1733 /2544 of 2006 instituted by

Respondent No.1-landlord seeking the Applicants eviction from the suit premises. The Appeal Court has upheld the dismissal of R.A.E. Suit No. 854/1357 of 2005, but reversed the decision in R.A.E. Suit No. 1733/2544 of 2006 without any justification or legal cause. Mr. Dani submitted that the material on record establishes that the suit premises had been let out to Kala Niryat (Defendant No.1.) which was a Partnership Firm and the induction of Rajan Kevalramani (Defendant No.2) as a Partner therein, hardly constitutes sub-tenancy. Similarly, if the Agreement dated 21 September 2005 between the Partnership Firm (Defendant No.1) and M/s. Merger Market Consulting Ltd., (Defendant No.3) is perused, it is clear that the transaction recorded therein is neither that of sub-tenancy nor that of a license. Mr. Dani submitted that the Appeal Court upon laying undue emphasis upon some of the clauses of the Agreement dated 21 September 2005, has unjustifiably held that the ground for eviction as contemplated by Section 16(1)(e) of the Rent Act has been made out. There is perversity in the record of finding of fact. Further, Mr. Dani submitted that the two grounds, i.e., unlawful subletting/license and non-user, cannot, simultaneously subsist. The impugned judgment and decree made by the Appeal Court is, therefore, in excess of jurisdiction and warrants interference.

3. On the other hand, Mr. R.A. Thorat, learned senior advocate for Respondent No.1, submitted that the impugned judgment and decree contains finding of fact, which are borne out from the material on record. There is no perversity whatsoever in the record of such findings of fact. Mr. Thorat pointed out that the material on record clearly establishes that Defendant No.3 had been put in possession of the suit premises and Defendant No.3 was paying Defendant No.1 an amount of Rs.85,500/- per month, when in fact, the rent being paid by Defendant No.1 to Respondent No.1-landlord was hardly Rs.5,700/- per quarter, i.e., Rs.1900/- per month. Mr. Thorat submitted that the onus was clearly upon the Defendants to establish the precise basis, upon which, Defendant No.3, which is incidentally a Multinational Company was in occupation of the suit premises. The contents of Agreement dated 21 September 2005, upon which, the Defendants had placed reliance establish a case of sub-tenancy or in any case, establishes that the suit premises were unlawfully licensed by Defendant No.1 to Defendant No.3. Further, the material on record including, the terms of so called inclusion of Defendant No.2 as Partner in Defendant No.1 Firm, establish that the Defendant No.1 had in fact sublet the suit premises to Defendant No.2. Mr. Thorat pointed out that the document in the form of

extract from the Registrars of Firms, does not even establish that Defendant No.2 was admitted as a Partner in Defendant No.1 Firm. In such circumstances, Mr. Thorat submitted the ground as contemplated by Section 16(1)(e), which includes not merely unlawful subletting, but also unlawful Licensing of the suit premises, was very much made out. Finally, Mr. Thorat submitted that the material on record indicates that Defendant No.1 or its original Partners, i.e., Mr. Deepak Kumar Rajendra Kumar Agarwal and Mrs. Prabha Shashikumar Gupta have not at all been using the suit premises, without any reasonable cause for a continuous period of six months immediately preceding the date of suit. In such circumstances, Mr. Thorat contended that even a ground as contemplated by Section 16(1)(n) of the Rent Act was very much made out. For all these reasons, Mr. Thorat submitted that Civil Revision Application be not entertained.

4. Having heard the learned counsel for the parties and perused the impugned judgment and decree, in my judgment, no case is made out to exercise the revisional jurisdiction and interfere with the impugned judgment and decree. The Appeal Court has recorded clear finding of facts and such finding of facts are not demonstrated to be vitiated either perversity or unreasonableness. This is clearly

not a case where there is any failure to exercise jurisdiction or that the exercise is in excess of jurisdiction. The issue of any material irregularity was not even raised and in any case, there is no basis for raising of the same.

5. Section 16(1)(e) of the Rent Act entitles the landlord to recover the possession of the tenanted premises, where the tenant has unlawfully sub-let or given on licence the whole or part of the premises or assigned or transferred in any other manner his interest therein. In order to prove the mischief of subletting as a ground for eviction under the Rent Act Laws, two ingredients have to be established. The first, involves parting with possession of the tenanted premises or part thereof by the tenant in favour of some third party. The second, that such parting with possession has been without the consent of the landlord and in lieu of compensation or rent. Inducting a partner or partners in the business by the tenant, bonafide, does not by itself, amount to subletting. However, if the purpose of this partnership is ostensible and some deed of partnership is drawn out to conceal the real transaction of subletting, the Court may as well tear the veil of partnership to find out the real nature of the transaction entered into by the tenant and such third party or the induction of some third party as partner in

the existing firm would not preclude the landlord from bringing on record material and circumstances, by adducing evidence or by means of cross-examination making out a case of subletting or parting with possession of the tenanted premises. The initial burden of proving subletting or parting with possession is with the landlord. But once the landlord is able to establish that the third party is in exclusive possession of the tenanted premises, onus shifts upon the tenant to prove the nature of occupation of such third party. In other words, the initial burden, which the law casts upon the landlord would stand discharged by adducing *prima facie* proof of the fact that some third party is found to be in occupation and control of the tenanted premises. In such circumstances, the presumption of subletting may then be raised and would amount to prove, unless rebutted.[1]

6. In the present case, the plaint had alleged subletting by Defendant No. 1, a partnership firm comprising Deepak Agarwal and Prabha Gupta as partners, having sublet the suit premises to the Defendant No. 2, Kevalramani. The plaint has further alleged that the suit premises, have in turn, been sublet or licensed to M/s. Merger Market Consulting Ltd. (Defendant No. 3). On basis of such

1 (2010) 1 SCC 217 Celina Coelho Pereira (Ms) & Ors. vs. Ulhas Mahableshwar Kholkar & Ors.

pleadings, the plaint as alleged that the ground as contemplated by Section 16(1)(e) of the Rent Act has been made out. The Appeal Court has accepted the case of the landlords that the ground for eviction as contemplated by Section 16(1)(e) of the Rent Act has indeed been made out. The findings of fact recorded by the Appeal Court are neither vitiated by any perversity nor jurisdictional error. In the exercise of revisional jurisdiction, it is really not expected of this Court to re-appreciate the material on record, with a view to examining whether some different view is possible on the basis of the material on record. Nevertheless, brief reference to the material on record will suffice to establish that the findings of fact recorded by the Appeal Court cannot be said to be vitiated by perversity.

7. In the present case, admittedly the suit premises had been let out to Kala Niryat (Defendant No. 1), a Partnership Firm comprising Deepak Agarwal and Prabha Gupta as partners. To the charge of subletting in favour of Kevalramani, the Defendants placed reliance upon certain deeds of partnership, on basis of which, it was urged that Kevalramanis have been admitted as partners in the Defendant No. 1 Firm. At the outset, the Appeal Court has rightly noted that the extract from the Registrar of Firms as produced on record, did not indicate the names of Kevalramanis as partners in the Defendant

No. 1 firm. The Deeds of Partnership and some notices purported addressed to the Registrar of Firms indicating the change in the constitution of firm, to a large extent are self serving documents. If indeed, Kevalramani had been bonafide, inducted partners in the Defendant No. 1 Firm, then it is reasonable to presume that necessary steps would have been taken to effect changes before the Registrar of Firms and extracts of registration details, would have clearly reflected this position. This was to be reasonably expected, particularly because the share in the profits of Agarwal and Gupta was reduced to hardly 10% and the share in the loss of hardly of 5%. Rajan Kevalramani who was examined on behalf of the Defendant No.1 Firm, virtually conceded that Agarwal and Gupta have not been associated with the business of export of Indian Handbook Cotton and that the Defendant No. 1 Firm has also not been carrying on this business for last few years. There is material on record which indicates that Kevalramanis were in exclusive possession and control of the suit premises. As noted earlier, in such circumstances, landlord in the present case, can be said to have discharged the initial burden by way of adducing *prima facie* proof that the party other than the tenant was in possession and control of the suit premises. The onus, then shifts upon the tenant to prove the nature of occupation of such third party and the circumstance that the original tenant continues to hold that the possession and control of the suit premises.

8. In the present case, as noted earlier, only Rajan Kevalramani, to whom, the suit premises are alleged to have been sub-tenanted, has examined himself. To answer the charge that the Defendant No. 1, Partnership Firm comprising Agarwal and Gupta had sublet the suit premises to Kevalramani, it was necessary that Agarwal and Gupta or at least one of them stepped into a witness box and depose to the precise nature of transaction between themselves and the Kevalramanis. However, neither Agarwal nor Gupta chose to examine themselves. Rajan Kevalramani, who deposed on behalf of the Defendant No.1 Firm, was clearly aware of this position as well as the necessity to examine Agarwal and Gupta. In the opening statement of his cross-examination, Kevalramani, in terms, deposed that Agarwal and Gupta would be examined in the matter. Ultimately however, neither Agarwal nor Gupta were examined in the matter. The material on record, whether oral or documentary, is hardly sufficient to rebut the presumption of subletting, in the facts and circumstances of the present case. As held by the Apex Court in the case of *Celina Coelho Pereira* (supra), even the existence of deed of partnership between the tenant and the alleged sub tenant or

ostensible transaction in any other form would not preclude the landlord from bringing on record materials and circumstances, by adducing evidence or by means of cross-examination, making out a case of subletting or parting with possession in tenancy premises by the tenant in favour of a third party. In this case, the material on record does indicate that Agarwal and Gupta, since the advent of Kevalramani, have not been associated with the Partnership business or have retained any control over the tenancy premises. The failure to examine Agarwal and Gupta, in the facts and circumstances of the present case, warrants the drawal of adverse inference. In this case, it is established that upon the advent of Kevalramanis, it is they who are in occupation of the suit premises. The onus therefore had shifted upon the Defendant No.1 and its partners. The landlord is not expected to know the terms upon which Kevalramanis were in occupation and control of the suit premises. Such terms are within the special knowledge of the tenant and therefore, it is for the tenant to depose to the same. If the tenant fails to do so, adverse inference can legitimately be drawn against such tenant. Applying these principles to the facts and circumstances of the present case, there is no warrant to interfere with the findings of fact recorded by the Appeal Court in the exercise of revisional jurisdiction.

9. Further, if for the sake of argument, it is accepted that the induction of Kevalramanis as partners in the Defendant No. 1 Firm did not constitute subletting or licensing or parting with possession of the suit premises, the material on record further and unmistakably, indicates that the Defendant No.1 licensed the suit premises to the Defendant No. 3, which is stated to be a multi national company having turnover of 100 million pounds (as deposed to by P.W. 1 on basis of information obtained from the internet). The agreement dated 21 September 2005 upon which reliance was placed by all the Defendants indicates that the same was executed by none other than Rajan Kevalramani (Defendant No. 2), purporting to act on behalf of the Defendant No. 1 Firm. The agreement indicates that the Defendant No. 3 was permitted to use the suit premises against payment of Rs.85,500/- per month. Rajan Kevalramani in his deposition has admitted that the agreement with the Defendant No. 3 was thereafter renewed and the Defendant No. 3, for the renewed term was paying approximately Rs.2,00,000/- per month. All this has to be examined, as it has been examined by the Appeal Court, in the background that the rent payable by the Defendant No. 1 in respect of the suit premises was hardly Rs.1,900/- per month.

10. Mr. Dani however placed reliance upon certain clauses of the agreement to indicate that the Defendant No.1 had furnished the premises and provided facilities for typing, photocopying, telephone connection, fax facilities etc. and further, that it was the business of the Defendant No. 1 to provide such service cabins along with such facilities. The material on record does not justify such position. The Appeal Court has considered not merely the terms of the agreement but also the other material on record in the form of oral and documentary evidence. Despite clauses in the agreement that the Defendant No. 3 was to use the premises from 8 a.m. to 8 p.m., it is clear that exclusive possession had been parted with, in favour of the Defendant No. 3. Shri Rheeder, the Director of the Defendant No. 3 who deposed in the matter has admitted having the key of the suit premises and deposed to the activities undertaken by the Defendant No.3 through the suit premises. This witness also admitted that the Defendant no. 3 has brought furnitures and fixtures and stated that it is not possible that expenses with regard to furnitures and fixtures must have been claimed in the income tax returns filed by the Defendant No. 3 at Hongkong. Even Rajan Kevalramani, in his cross-examination has admitted that that the Defendant No. 3 had physically occupied the suit premises against initial payment of

Rs.85,500/- per month, which amount was thereafter enhanced to Rs.2,00,000/- per month. As noted earlier, the provisions contained in Section 16(1)(e) of the Rent Act contemplate not mere unlawful subletting but also unlawful licensing of the suit premises. From the material on record, it is apparent that between 2005 and 2011 or thereabouts, the suit premises had been licenced to the Defendant No. 3 against payment of huge consideration of Rs.85,500/- per month and Rs.2,00,000/- per month, when in fact, the rent payable by the Defendant No. 1 in respect of the suit premises was hardly Rs.5,700/- per quarter or Rs.1,900/- per month. The Appeal Court, has rightly taken into consideration the entire material on record and appreciated the same in its proper perspective. The Appeal Court has adopted correct principles in the matter of determination whether the ground as contemplated by Section 16(1)(e) of the Rent Act was made out. There is absolutely no perversity or error of jurisdiction in the appreciation of evidence or the record of findings of fact. The Petitioners have therefore failed to make out any case warranting interference under Section 115 of the Code of Civil Procedure, 1908.

11. Mr. Dani, however, submitted that the transaction between Defendant Nos.1 and 2 at one hand and Defendant No.3 on the

other, does not qualify as a '*licensee*' within a meaning assigned to this terms under Section 7(5) of the Rent Act. This is because, according to Mr. Dani, the Agreement dated 21 September 2005 is an agreement for '*conducting a running business*'. This submission cannot be accepted. The Appeal Court has rightly considered the material on record. Section 7(5) of the Rent Act defines the expression '*licensee*' to *inter alia* means the person who is in occupation of the premises or such part thereof, as the case may be under a subsisting licence of agreement given for a licence fee or charge, but does not include a person conducting a running business belonging to the licensor. In this case, the Defendant No.3 can certainly not be qualified to be called as a person '*conducting a running business belonging to Defendant No.1.*' Such an inference cannot even remotely be drawn from the Agreement dated 21 September 2005. The terms of Agreement dated 21 September 2005, when construed alongwith other oral as well as documentary evidence on record establishes that Defendant No.2, purporting to act on behalf of Defendant No.1 (such authority itself being in serious dispute, as it is not established that the so called induction of Defendant No.partnership 2 as Partner of Defendant No.1 Firm was itself *bonafide* and not merely a camouflage for subletting or licensing) had licensed the suit premises to Defendant No.3 and thereby, rendered the Defendants liable for eviction under Section 16(1)(e) of the Rent Act. The circumstance that Defendant No.3, eventually, vacated the suit premises, hardly exempts the Defendant Nos.1 and 2 from the liability to face eviction under Section 16(1)(e) of the Rent Act. There is accordingly, no case made out to interfere with the impugned judgment and decree made by the Appeal Court.

12. There is no necessity to further decide whether the grounds as contemplated by Section 16(1)(e) and Section 16(1)(n) of the Rent Act can simultaneously co-exist. However, the material on record does establish that the original partners of Defendant No.1 have not been using the suit premises for the purposes for which they were let out for a continuous period of six months immediately preceding the date of filing of the suit and for much period in excess of statutorily prescribed period. As noted earlier, Defendant No.1 has been unable to discharge the onus in terms of decision of the Hon'ble Apex court in case of *Celina Coelho Periera* (supra). There is neither any jurisdictional error in making of the impugned judgment and decree nor it can be said that the findings of fact recorded therein are vitiated by any perversity.

13. The Hon'ble Apex Court, in case of ***N.Eswari w/o. Adinarayana vs. K.Swarajya Lakshmi w/o. of K.V.L.N.A. Sastry***[2]***,*** has made the following observations, which are quite appropriate in the context of scope of interference with the findings of fact in exercise of revisional jurisdiction under Section 115 of the Code of Civil Procedure, 1908.

> *13. In Rajbir Kaur Vs. S. Chokesiri and Co. - (1989) 1 SCC 19, this Court considered this aspect of the matter and in para 43, has dealt with the aforesaid question elaborately : (SCC p.37)*
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> > "*43. When the findings of fact recorded by the courts below are supportable on the evidence on record, the Revisional Court must, indeed, be reluctant to embark upon an independent reassessment of the evidence and to supplant a conclusion of its own, so long as the evidence on record admitted of and supported the one reached by the courts below. With respect to the High Court, we are afraid, the exercise made by it in its revisional jurisdiction incurs the criticism that the concurrent finding of fact of the courts below could not be dealt and supplanted by a different finding arrived at on an independent reassessment of evidence as was done in this case*".
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> *14. The Rent Controller and the appellate authority had considered the entire materials on record and the arguments adduced by the parties and came to a finding that the requirement of the respondent landlady was not genuine and there was no need to leave her permanent house at Hyderabad, where she has been living, to come over to Vijayawada to stay alone at the age of seventy years without there being anyone to look after her. This finding of fact*

2 (2009) 9 SCC 678

> *arrived at by the Rent Controller and the appellate authority, in our view, cannot be said to be perverse and arbitrary.*
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> *15. That being the position, we are of the view that it was not open to the High Court, in the exercise of its revisional jurisdiction, to interfere with the concurrent findings of fact of the Rent Controller as well as of the appellate authority."*

14. For all the aforesaid reasons, this Civil Revision Application is dismissed. There shall, however, be no order as to costs.

(M.S. SONAK, J.)

15. Ms. Nerurkar, the learned counsel for the Applicants states that the Applicants would like to take recourse against this judgment and order before the Hon'ble Apex Court and prays that eviction decree may not be executed for a period of eight weeks from today. Subject to the Applicants filing the usual undertaking in this Court within a period of two weeks from today and furnishing copy thereof to the learned counsel appearing for the Respondent, the eviction decree shall not be executed for a period of eight weeks from today.

(M.S. SONAK, J.)