

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

**CIVIL REVISION APPLICATION NO. 1026 OF 2014
WITH
CIVIL APPLICATION NO. 594 OF 2014
IN
CIVIL REVISION APPLICATION NO. 1026 OF 2014**

Mrs. Safiya Sabirbhai Wadhvanwala .. Applicant
Vs.
Mr. Marzban Minocher Irani & Anr. .. Respondents

Mr. Shabbir Kapadia for Applicant.
Mr. V.Y. Sanglikar for Respondents.

**CORAM : K.R.SHRIRAM, J.
DATED : 6TH JANUARY, 2015**

P.C.

1 Revision Application is filed impugning the order and judgment dated 11.9.2014 passed by the Bench of Appellate Court No.4 of the Small causes Court, Main Branch, Mumbai, whereby the appeal filed by the applicant was dismissed with costs.

2 The respondents had filed a suit for eviction against petitioner on three grounds viz. (a) of arrears of rent, (b) unauthorised construction, and (c) bonafide requirement. The Trial Court negated the bonafide requirement plea but decreed the suit

holding that the petitioner was in arrears of rent and also, unauthorised construction had been carried out in the suit premises.

3 The petitioner admits that they were in arrears of rent but according to him the rent demanded was in excess of what was required to be paid. Even after the appeal has been dismissed, the petitioner continues to be in arrears of rent because according to the petitioner what was directed to be paid was in excess of what was required to be paid.

4 On the issue of unauthorised alteration to the suit premises of a permanent nature, the trial Court had held that the defendant, i.e. the petitioner herein, without the consent of the plaintiff, i.e., the respondent herein had carried out permanent construction of mezzanine floor inside the suit premises and enclosed 15sq.ft. of common passage and thereby caused permanent damage to the suit premises. No Commissioner to inspect the alteration was appointed because it was the case of the defendant, namely the petitioner herein, that the mezzanine floor and also enclosure was already there when the tenancy agreement was entered into on 6th March 2000. It was the case of the plaintiff, i.e.,

respondent herein that such a mezzanine floor and enclosure was never in existence.

5 The trial Court has correctly held that in such a situation, it was for the defendant, i.e. petitioner herein to prove that the mezzanine floor and enclosure was in existence when the petitioner was put into possession. The Court has also come to the conclusion that no such independent evidence was led by the defendant, i.e., the petitioner as to the existence of the said mezzanine/loft. The Court therefore, concluded that the petitioner, i.e., original defendant, had put up a loft/mezzanine floor in breach of that agreement.

6 I have also perused the tenancy agreement in which in clause 3 (vi) it is expressly provided that no structural alterations to the said premises to be carried out and no loft whether of temporary or permanent nature in the suit premises or any part thereto could be constructed. Clause 3 (vi) reads as under :-

“Not to carry out any structural alterations to the said premises and not to construct any loft whether temporary or permanent, in the said premises or any part thereof. ”

7 The scope in revision is very narrow. The court can interfere only if it appears to the Court that the trial Court has exercised jurisdiction not vested in it by law or has failed to exercise jurisdiction so vested or has acted in the exercise of its jurisdiction illegally or with material irregularity. Moreover, it is settled law and as confirmed by the full Bench of the Apex Court in the matter of Hindustan Petroleum Corporation Ltd. v/s. Dilbahar Singh,¹ the High Court shall not interfere with the finding of fact recorded by the Trial Court or the first appellate authority unless the finding of fact is perverse or has been provided without consideration with material evidence or such finding was based on no evidence or misreading of the evidence or is grossly erroneous to such effect that to allow it to stand would result in gross miscarriage of justice. Two Courts have given concurrent findings. Further having considered the findings of the trial Court I find nothing wrong in the conclusion arrived at by the trial Court and the first appellate authority.

8 In the circumstances Civil Revision Application has to fail and is hereby rejected.

¹2014 (9) SCC 78

9 The counsel for the petitioner seeks 8 weeks stay of this order as well as the execution of the decree. Counsel for the petitioner confirms that the petitioner is in possession of the suit premises and no third party right has been or will be created. He also undertakes to comply with the usual conditions as is required and file the undertaking in the usual form within one week from today. In view thereof, this order is stayed for a period of 8 weeks from the date of uploading of the order. The stay, it is clarified is only with regard to possession. Since the Civil Revision Application itself is not admitted, the interim application for stay is also disposed of.

(K.R. SHRIRAM, J.)