

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 634 OF 2015

Mahesh D. Gupta .. Applicant
vs.
Naresh K. Fatania and anr. .. Respondents

Mr. B.R. Dalal for the Applicant.
M.A. Shukla for the Respondent No.1.

CORAM : M. S. SONAK, J.
DATE : 20 OCTOBER 2015.

P.C. :-

- 1] Not on board. Upon production, taken on board.
- 2] This Civil Revision Application challenges the impugned judgments and decrees dated 4 February 2010 and 3 September 2015 made by the Trial Court and the Appeal Court respectively, ordering the eviction of the Applicant from the suit premises on the ground of unlawful subletting.
- 3] Mr. Dalal, the learned counsel for the Applicant submitted that the findings recorded in the impugned judgments and decrees are vitiated by perversity. He submitted that the neighbour who was examined was an interested witness as he was himself having alternate premises and feared that proceedings for eviction would be initiated by the landlord against him. Similarly, the witness

Mrs Rosy M. Estrocio has admitted that she had not verified as to whether the address stated by Mitesh, Satish Sharma's son was correct. The learned counsel for the Applicant submitted that the entire testimony of the witnesses who deposed in faovur of the landlord is false and the same should not have been believed. The learned counsel submitted that the suit premises ad-measure hardly 64 sq. ft. area and in the suit premises, it was not possible for his family to reside. The family has, therefore, been shifted to Jaipur in the order to take care of the Applicant's parents. The learned counsel for the Applicant submits that he is residing in the suit premises, since he carries out the business of handicrafts in Mumbai and therefore, there is no case made out to order his eviction.

4] Having heard the learned counsel for the Applicant and perused the record, in my judgment, there is no case made out to interfere with the concurrent finding of facts recorded by two Courts. The Applicant had admitted that the Applicant has shifted his family from Mumbai to Jaipur in order to attend his sick parents. The Applicant in his deposition stated that he carries out handicrafts business in Mumbai. The Applicant in his deposition has volunteered and proceeded to state that he is doing the business from suit

premises. This is despite the fact that admittedly the suit premises were let out for residential purposes. That apart, the Applicant was unable to produce even a single documentary evidence to establish that he was indeed carrying out any handicrafts business in Mumbai. In fact, the Applicant had admitted that he does not have documentary evidence to show that he is running handicrafts business.

5] The allegation was that the suit premises have been illegally let out to Satish Sharma. The Applicant's defence was that the Satish Sharma was his employee and used to come to the suit premises to only clean the same. The two Courts have rightly disbelieved this kind of defence. There is material on record which indicates that the suit premises were indicated as address where Satish Sharma resides, when it came to admission of Satish Sharma's son in the School. The summons in the eviction suit was served upon the Defendant No.2, i.e., Satish Sharma in the suit premises itself. There is material on record and deposed to by the neighbour that Satish Sharma's daughter was born whilst Satish Sharma was residing in the suit premises. The landlord also resides in the same building, who has deposed to sub-letting. Further, the

neighbour has also been examined to depose to the aspect of sub-letting.

6] In matters of sub-letting, once, person other than the tenant is found in occupation of the suit premises, the onus shifts upon the tenant to explain the circumstances in which such third person is in occupation of the suit premises. In the present case, the Applicant has failed to discharge the onus. Satish Sharma neither filed any written statement nor examined himself in these proceedings.

7] There is no perversity in the concurrent finding of facts recorded by the two Courts. In exercise of revisional jurisdiction, it is not possible to re-appreciate the material on record with a view to examine, if some other view is possible or probable. Unless the Applicant is able to make out a case of perversity, there is no question of exercise of revisional jurisdiction.

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

9] At this stage, Mr. Dalal, learned counsel for the Applicant, seeks a stay on the execution of the eviction decree for a period of eight weeks. Subject to the Applicant filing usual Undertaking in the Registry of this Court within a period of two weeks from today, the eviction decree shall not be executed for a period of eight weeks from today. Copy of the Undertaking to be furnished to the learned counsel appearing for the Respondent-landlord before the same is filed in the Registry.

(M. S. SONAK, J.)

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