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

CIVIL REVISION APPLICATION NO. 1028 OF 2014.

Shekhar Narayan Shetty.

.. Applicant

Vs.

Madhavlal Narayanlal Pittie & ors.

.. Respondents

Mr.Shardul Singh a/w Kavita Shah, for Applicant.

Mr.R.S.Tiwari a/w Ms.Dhun Chhapagaur i/b M/s D.J.Kamdin & Co., for Respondent No.1.

***CORAM: N.M.Jamdar, J.
Wednesday 15 April, 2015***

Oral Order :

By this Revision application, the Applicant challenges the Judgment and Order passed by the Appellate Bench of the Small Causes Court, Mumbai dated 26 September 2014 confirming the Judgment and Decree passed by the Small Causes Court, Mumbai dated 6 October 2014. Both the Courts have concurrently found that the Applicant is a sub-tenant of the premises, sub-tenancy was created without the permission of the Respondent-landlord / Original Plaintiff and the applicant is liable to be evicted from the premises.

2 The premises in question are on the ground floor of Building No.17 forming part of the property known as Shivilal Motilal Mansion, situate at junction of Bellasis Road / Lamington Road,

Bombay Central. The Respondent No.1 was appointed as a Receiver in Suit No.224 of 1961 in respect of various properties known as Shivilal Motilal Mansion / compound comprising of several buildings situated at Bombay Central. The R.A.E Suit No.882/1623 of 1998 was filed by Respondent No.1/ Plaintiff. It was contended that the Respondent No.2 / Defendant No.1 was the tenant of Flat No.70 on the ground floor of building No.17 at monthly rent of Rs.305.40. The suit premises were described as four rooms Nos.A to D, common passage, small veranda and sanitary block of one bath room and two W.C's. It was the case of the Respondent No.1 / Plaintiff that Defendant No.1 was running a provision store in Room Nos.A and B. Thereafter the Defendant No.1 without the permission of the Plaintiff sublet the premises No.C to Defendant Nos.2-A to 2-F and sublet Room No.D to Defendant No.4-present Applicant. The Defendants including the Applicant filed a Written Statement. It was the contention of the Applicant that the Applicant was accepted as a direct tenant in the year 1981 in respect of Room No.D. It was the case of the Applicant that he was inducted by one Parmanand Devkaran Shah, with permission of the landlord.

3 Thereafter the suit was heard by learned Judge of the Small Causes Court. The learned Judge framed issues. The learned Judge found that Defendant No.1 had sublet the premises in favour of the Applicant and had changed the user of the premises and was liable to be evicted. Accordingly, learned Judge, Small Causes Court decreed the suit by Judgment and Decree dated 6 October

2004. Thereafter the Applicant filed an appeal before the Appellate Bench of Small Causes Court bearing (A-1) Appeal No.101 of 2005. Before the Appellate Bench, the Applicant reiterated the contention that the Applicant was a direct tenant of the premises having been inducted by the earlier tenant Mr.Shah with permission of the Plaintiff. The Appellate Court considered the evidence in detail and also considered the arguments of both the sides and by Judgment and Order dated 26 September 2014 dismissed the appeal. Both the Courts have recorded finding that the Plaintiff proved that the entire premises were given to the Defendant No.1 and single rent receipt was issued in respect of the suit premises.

4 The learned counsel for the Applicant, Mr.Shardul Singh, submitted that there is nothing on record to show that the Defendant No.1 was ever in possession and that he has inducted the Applicant. The fact that the Defendant No.1 was a tenant of the premises from the year 1979 onwards has been established on evidence and this fact is concurrently recorded by the courts below. Nothing has been pointed out to dislodge this finding of fact. Once the concurrent finding of fact that Defendant No.1 was a tenant of the entire premises is not satisfactorily dislodged then the presence of the Applicant in Room no.D has to be explained. In the present case, the Defendant No.1 has not chosen to challenge the Decree and it is the Applicant who has pursued the challenge. Therefore, either the Applicant must prove that the Applicant is in possession of the premises as a direct tenant which is the case advanced by him or that sub-tenancy was created by Defendant

No.1 in favour of the Applicant with the consent of the Plaintiff.

5 The sub-tenancy always has to be determined from the facts and circumstances, as many times the landlord is not aware as to the creation of rights in favour of a sub-tenant by the tenant. Once the finding of fact stood established that Defendant No.1 was treated as a tenant since the year 1980 and that Applicant was found in possession of Room no.D, then preliminary presumption as regards the sub-tenancy would arise ,unless disproved. The Applicant is in exclusive possession of Room No.D. According to him it is used as a storage for commercial purposes. Therefore the presumption that rights were assigned in favour of Applicant by Defendant No.1 for profiteering will have to be presumed unless proved to the contrary.

6 The only position which was urged to the contrary is that the Applicant had become tenant with the permission of the landlord through the erstwhile tenant. There is hardly any evidence to that effect to substantiate this assertion. The Applicant is not even aware as to when the Applicant came in possession. There is no written permission in respect of alleged tenancy created by Mr.Shah in favour of the Applicant. It is mere assertion of the Applicant that Applicant was put in possession with the consent of landlord by Mr.Shah. In absence of any cogent evidence both Courts were not in error in discarding the case of the Applicant. Once this defence of the Applicant stood rejected then Applicant failed to dislodge the presumption of sub-tenancy drawn against him.

7 Mr.Shardul Singh submitted that Defendant No.1 was not tenant in respect of the entire premises. However, there is a concurrent finding of fact after assessing the evidence, such as rent receipts, that Defendant No.1 was a tenant of all the rooms. It is not possible to interfere in revisional jurisdiction that it is pure finding of fact.

8 Mr.Shardul Singh then relied on the decision of the Apex Court in the case of **Miss S.Sanyal v. Gian Chand** reported in *AIR 1968 Supreme Court 438*, to contend that there cannot be composite decree and only in respect of part of the premises. It has to be noted that the challenge in the present Revision Application is by a party who is held to be a subtenant. The tenant has not chosen to challenge the decree. Sub-tenant who is occupying part of the premises for which decree is passed. It is not open for the sub-tenant to advance this position of law. At the most this challenge can be raised by the tenant. The only way the Applicant could have raised a challenge was to demonstrate that he is a direct tenant of the suit premises, which was his case in the Written statement. The Applicant having been found in possession of the premises which was let out to Defendant No.1 who has been held to be a tenant by both the Courts below and who has suffered the decree of sub-tenancy and has not chosen to challenge it, in the facts and circumstances of the case, no challenge can be entertained at the behest of the Applicant .

9 Mr.Shardul Singh then urged that the finding that the Applicant has changed the user of the premises is incorrect as the finding can only be rendered against Defendant No.1. He submitted that there is no basis for arriving at this finding. Even assuming the Applicant is correct, it will not make any difference as far as the finding of sub-tenancy rendered against the Applicant by both the Courts below. Taking overall view of the matter there is no error or perversity or error of jurisdiction in the impugned orders. The Revision application is accordingly rejected.

10 At this stage, Mr.Shardul Singh seeks extension of the ad-interim order granted on 7 November 2014. Considering the facts and circumstances, the ad-interim order dated 7 November 2014 will continue for a period of eight weeks. It is however, on the condition that the Applicant keeps depositing compensation at the rate of Rs.5,000/- as fixed by the Appellate Court, from today onwards till he hands over the possession and the Applicant will not create any third party rights in the property.

(N.M.Jamdar, J.)