

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 1058 OF 2014

M/s. Zenal Construction Pvt. Ltd. .. Applicant
vs.
Vinay D. Barot and ors. .. Respondents

Mr.G.S. Godbole a/w. Ms Anjali Neel Helekar for the Applicant.
Mr. P. A. Shinde i/b Anant B. Shinde & Co. for Respondent Nos.3
and 4.
Mr. PS. Dani, Sr. Advocate i/b Ms Jui Nerurkar for Respondent No.5.

CORAM : M. S. SONAK, J.
DATE : 02 SEPTEMBER 2015.

P.C. :-

1] This Civil Revision Application is directed against the judgments and decrees dated 15 February 2014 and 30 September 2014, by which the Trial Court and the Appeal Court have declined to declare the applicant as tenant in respect of suit premises.

2] Mr. Godbole, learned counsel for the applicant, submitted that at the stage when the suit for declaration was instituted in the year 2008, the paid-up share capital of the applicant was less than Rupees One Crore. The circumstance that the said paid-up share capital increased beyond Rupees One Crore as the suit progressed was not a matter which ought to have been held against the applicant, in the matter of applicability of provisions of Maharashtra Rent Control

Act, 1999 (Rent Act). Further, Mr. Godbole contended that the lease in the present case, was created by document dated 19 February 2000, which is before the Rent Act entered into force. Accordingly, there is no requirement that such Lease Deed be registered. The two Courts have therefore, unduly held the circumstance of non-registration against the applicant. Finally, Mr. Godbole submitted that the findings of fact recorded by the two Courts suffer from perversity, inasmuch as relevant material has been ignored and irrelevant material taken into consideration. For all these reasons, Mr. Godbole submitted that the impugned judgments and decrees warrant interference by this Court in exercise of its revisional jurisdiction under Section 115 of the Code of Civil Procedure, 1908 (CPC).

3] Mr. P.S. Dani, learned senior advocate for respondent No.5, on the other hand, submitted that the findings of fact concurrently recorded by the two Courts are sufficiently borne from the material on record and there is no perversity whatsoever involved. Mr. Dani joined the issue with other contentions raised by Mr. Godbole as well, but submitted that there is overwhelming material on record which establishes that the applicant had approached the Court with

a false case and therefore, revisional jurisdiction ought not to be exercised in favour of such applicant.

4] Having heard learned counsel for the parties and perused the record, in my judgment, no case is made out to interfere with concurrent findings of fact recorded by the two Courts to the effect that the applicant was not the tenant in respect of the suit premises. The findings of fact are amply borne from the material on record. There is no perversity. This Court, in exercise of revisional jurisdiction under Section 115 of the CPC is not expected to reappreciate the entire material on record, as if, it were exercising any appellate jurisdiction. As long as, no perversity is demonstrated in the record of finding of fact, there is no question of interference. This is also not a case of failure to exercise jurisdiction or that the findings of fact recorded by the two Courts are in excess of jurisdiction. There is no case made out to demonstrate either illegality or even any material irregularity.

5] The suit premises were mortgaged by the landlord, i.e., respondent Nos. 1 and 2 herein in favour of the Bank of Baroda as a security towards repayment of some financial assistance. On

account of default, the suit premises were purported to be attached, taken over and finally sold in public auction. Respondent No.5 herein is the auction purchaser. At this stage, the applicant has instituted the suit seeking declaration that it is the tenant in respect of suit premises.

6] The applicant, which is a private limited company. In this case, although Lease Agreement dated 19 February 2000 is produced on record, the same is admittedly not registered. Further, though rent receipts are produced on record, they indicate that the payment of rents have purportedly been made in cash. The statement of accounts have not been produced on record. No resolutions of the company were also produced on record. In short, no contemporaneous record, was ever produced on record for the purpose of establishing that this was indeed some genuine tenancy created on 19 February 2000. The question is really not whether the Lease Agreement was required to be registered or not. Even if we proceed on the basis that no registration was compulsory, the two Courts have rightly observed that the entire material on record, is by no means sufficient to declare the applicant as tenant in respect of suit premises. Rather, the two Courts on the basis of material on

record have observed that the so called documentary evidence was in the nature of self serving documents, created by the applicant and respondent Nos.1 and 2, primarily from preventing the auction of the suit premises in favour of respondent No.5. There is no perversity in the record of such findings of fact by the two Courts.

7] The Trial Court has further taken note of the circumstance that the respondent Nos.1 and 2, in the proceedings before the DRT-II, Mumbai, have always indicated that the suit premises as the address in which they reside. Further, the demand notice issued by the Bank, affidavit of attachment of warrant, sale proclamation notice and all such process have been served upon the respondent Nos.1 and 2 at the suit premises. Upon taking into consideration of all these materials, the two Courts have held that it is respondent Nos.1 and 2, who were actually residing in the suit premises and that only a facade of tenancy was attempted to be created. Again, neither has any relevant material been excluded nor has any irrelevant material being taken into consideration. There is really no perversity in the findings of fact concurrently recorded by the two Courts.

8] There is no necessity, at least, in this case to decide the effect of increase in share capital of a private limited company after suit for declaration of tenancy is instituted by it. The facts as borne out from the record, even otherwise, are sufficient to sustain the impugned judgments and decrees made concurrently by the two Courts.

9] Accordingly, this Civil Revision Application is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

dinesh

CERTIFICATE

“I certify that this Order uploaded is a true
and correct copy of original signed Order.”