

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 865 OF 2013

Riyaz U. Agwan and anr. .. Petitioners
vs.
Rajesh M. Savla and ors. .. Respondents

Mr. S.R. Page for the Applicant/Petitioners..
Mr. P.S. Dani, Sr. Advocate a/w. Mr. Omkar Kulkarni i/b Ms Reena Salunkhe for Respondent No.1.

CORAM : M. S. SONAK, J.

DATE : 23 JUNE 2015.

P.C. :-

- 1] This revision application is directed against the following:
 - (a) Judgment and order dated 22 March 2011 made by the Small Causes Court, Mumbai in R.A.E. Suit No. 633/1084 of 2002;
 - (b) Judgment and order dated 24 September 2013 made by the Appellate Bench of the Small Causes Court in Appeal No. 37 of 2011, confirmed the aforesaid judgment and order.
- 2] By the aforesaid impugned judgments and orders, the eviction of the petitioners has been ordered from the suit premises on the grounds available under Section 16(1)(e) and Section 16(1)(g) of the Maharashtra Rent Control Act, 1999 (said Act).

3] Mr. Page, learned counsel appearing for the applicant made the following submissions in support of the revision application.

(a) That the suit premises belong to the Hindu Undivided Family (HUF). Accordingly, the plaintiff, i.e., predecessor-in-title of respondent No.1 was not at all entitled to sue in her individual capacity. That apart, upon the demise of the original plaintiff, only one of her legal representatives, i.e., respondent No.1 has purported to continue with the eviction proceedings on the basis of an alleged Will. No probate was either obtained or relied upon. For this reason also, the proceeding as instituted or continued were incompetent and no orders of eviction could have been made therein;

(b) The material on record establishes that the assignment of tenancy by the original defendant No.1 in favour of the petitioners herein, was with the consent of the original plaintiff. Accordingly, the same was by no means unlawful. No case was, therefore, made out to order eviction under Section 16(1)(e) of the said Act;

(c) Similarly, there is material on record that the original plaintiff and thereafter the respondent no.1, was in

possession of several rooms in the same building where the suit premises are located. In another suit, the material has been produced which would indicate that the respondent No.1 is in possession of no less than eleven rooms. All these materials would establish that the so called requirement was neither reasonable nor *bona fide* and in any case, on the aspect of comparative hardship, a finding ought to have been returned in favour of the petitioners.

4] Mr. P.S. Dani, learned senior counsel appearing for respondent No.1, defended the impugned orders by submitting that the findings of fact were borne amply by the materials on record and even otherwise there was no jurisdictional error warranting interference under Article 115 of the Code of Civil Procedure, 1908 (C.P.C.).

5] Having heard the learned counsel for the parties and perused the material on record, in my judgment, no case is made out to interfere with the concurrent findings of fact arrived at by the two Courts.

6] In the context of the first contention of Mr. Page, it is to be noted that the suit for eviction in the present case had not been instituted on the basis of title but on the basis that the respondent No.1 was landlord of the suit premises. Section 7(3) of the said Act defines the expression “landlord” in the following manner:

(3) "Landlord" means any person who is for the time being, receiving, or entitled to receive, rent in respect of any premises whether on his own account or on account, or on behalf, or for the benefit of, any other person or as a trustee, guardian, or receiver for any other person or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant; and also includes any person not being a tenant who from time to time derives title under a landlord, and further includes in respect of his subtenant, a tenant who has sub-let any premises; and also includes, in respect of a licensee deemed to be a tenant under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bom.LVII of 1947), the licensor who has given premises on licence and in respect of the State Government, or as the case may be, the Government allottee referred to in sub-clause (b) of clause (2) deemed to be a tenant by section 27, the person who was entitled to receive the rent if the premises were let to a tenant immediately before the 7th December, 1996, that is before the coming into force of the Bombay Rents, Hotel and Lodging House Rates Control, Bombay Land Requisition and the Bombay Government Premises (Eviction) (Amendment) Act, 1996; (Mah.XVI of 1997)”

7] The case as set out by the petitioners in their written statement is that defendant No.1 was the original tenant in respect of the suit premises and the said defendant No.1, with the consent of

original plaintiff has assigned tenancy rights to the petitioners. For this purpose, the petitioners had even contended that they have paid a sum of Rs.50,000/- in cash to the original plaintiff. In the light of such pleadings, it is hardly for the petitioners to question the maintainability of the suit on the ground that the suit premises were owned by the HUF and the original plaintiff was not a competent to institute the suit. The plaintiff was certainly a '*landlord*' within the meaning assigned to this term under Section 7(3) of the said Act *qua* the defendants and consequently entitled to maintain the proceedings for eviction.

8] That apart, it is settled position in law that even the single co-owner can maintain a suit for eviction. Further, once the suit is held to be maintainable, the same cannot be defeated on the sole ground that all the alleged legal representatives of the deceased plaintiff were not brought on record. The issues with regard to the validity of the Will or otherwise were quite alien to the scope of the proceedings initiated in the present case. Both the Courts have correctly appreciated this position and have declined to non-suit either the original plaintiff or the respondent No.1 from maintaining or continuing the proceedings. There is neither any jurisdictional

error nor any error of approach. There is no merit in Mr. Page's first contention.

9] On the aspect of eviction on the basis of ground available under Section 16(1)(e) of the said Act, again, there is no evidence whatsoever on the aspect of alleged consent of the original plaintiff to the assignment of the tenancy by defendant No.1 in favour of the petitioners. There is no material on record establishing payment of Rs.50,000/-. Both the Courts have rightly held that the petitioners have set up contradictory defences and in any case, have been unable to establish the same. The onus of establishing that the assignment or transfer by defendant No.1 in favour of the petitioners being lawful, was upon the original defendant No.1 and the petitioners herein. Such onus, the said parties, have failed to discharge.

10] There is material on record that the petitioners came into the suit premises in the month of May 2002. There is material on record which suggest that the original plaintiff soon thereafter lodged police complaints. On 11 June 2002, the present suit, in which the impugned orders have been made came to be instituted. Clearly

therefore, there is no material to establish that the original plaintiff had in fact, given her consent to assignment in favour of the petitioners or that the original plaintiff had accepted the petitioners as the tenants of the suit premises. The defence raised in the written statement is at variance with the defences raised by the petitioners before the police authorities as well as in the course of the evidence. In any case, the petitioners have failed to establish any of such defences. Accordingly, there is no reason to interfere with the concurrent findings of fact recorded by the two Courts on the aspect of unlawful assignment or transfer of interest in the suit premises. The second contention of Mr. Page, therefore, fails.

11] On the aspect of *bona fide* requirement, again, the two Courts have recorded concurrent findings of fact. The learned counsel for the petitioners, was unable to demonstrate any perversity in the record of such findings of fact. On the aspect of comparative hardship, the onus is upon tenant. In the present case, the material on record establishes that the defendant No.1 who was original tenant had left the suit premises alongwith his daughter after handing over the possession of the suit premises in favour of the petitioners. The petitioners have been adjudged to be unlawful

assignees, or transferees in respect of the suit premises. In such a position, the so called hardship of the petitioners is hardly relevant. That apart, the petitioners have even otherwise, failed to adduce any cogent evidence on the aspect of comparative hardship. Accordingly, there is no reason to interfere with the findings of fact recorded by the two Courts on the aspect of reasonable and *bona fide* requirement as well as comparative hardship. Even independent of this ground, the eviction is required to be sustained on the basis of ground available under Section 16(1)(e) of the said Act.

12] Accordingly, this is not a case where the two Courts can be said to have exercised their jurisdiction with material illegality or irregularity, so as to warrant the exercise of revisional jurisdiction under Section 115 of the CPC. This Revision Application is accordingly, dismissed. There shall be no order as to costs.

13] At this stage, Mr. Page applies for continuation of ad-interim relief, which was already granted, for a period of eight weeks from today. Subject to furnish of usual undertaking in the Registry, within a period of one week from today, such ad-interim protection is continued for a period of eight weeks from today. The petitioners to

furnish a copy of such undertaking to the learned counsel for respondent No.1 within a period of one week from today. If no undertaking is lodged or if there is any breach of undertaking so lodged, the petitioners shall not be entitled to avail the benefit of continuance of interim protection. Further, the petitioners in order to avail the benefit of this interim protection to deposit, before the Appellate Bench of the Small Causes Court, compensation at the rate of Rs.1500/- per month from the date of disposal of the appeal till 31 August 2015, within a period of two weeks from today. Respondent No.1 shall be at liberty to apply before the Appellate Bench for withdrawal of the amounts deposited by the petitioners during pendency of appeal and as directed by this order, after a period of eight weeks from today and subject to any orders in this regard by the Hon'ble Apex Court.

(M. S. SONAK, J.)