

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 26 OF 2014

Rukmani S. Jain .. Applicant
Vs.
Chandrakant K. Mhatre & anr. .. Respondents

Mr. N.V. Walavalkar, Sr. Advocate i/b Mr. Santosh M. Suryawanshi
for the Applicant.
Mr. D. S. Patil for the Respondent No.1.

CORAM : M. S. SONAK, J.
DATE : 08 SEPTEMBER 2015.

P.C. :-

1] This Civil Revision Application impugns the judgments and decrees dated 30 January 2008 and 22 November 2013 made by the Trial Court and the Appeal Court respectively.

2] The respondent-landlord had instituted suit for eviction against the applicant and respondent No.2 *inter alia* on the grounds of default in payment of rent and unlawful sub-letting. The Trial Court decreed the suit on the ground of unlawful subletting and on the ground of default in payment of rents. The Appeal Court has however decreed the suit for eviction on both the grounds Hence, the present Civil Revision Application.

3] Mr. Walavalkar, learned senior advocate for the applicants, contended that the statutory notice under Section 12 (2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Rent Act) dated 27 October 1991 made reference to alleged arrears for the period between 1 October 1989 and 30 September 1991. There is an admission in the plaint itself that such arrears were cleared prior to the institution of the plaint. However, the cause of action pleaded is alleged default for the period between 1 November 1992 and 31 January 1993. In respect of such alleged default, there was no statutory notice under Section 12 (2) of the Rent Act issued to the applicant. Such notice being mandatory and in absence thereof, there was no question of making of any decree of eviction on the ground of default in payment of rent.

4] Mr. Walavalkar further submitted that there is perversity in the record of findings of fact on the aspect of unlawful subletting. From the material on record, it is clear that there was no exclusive parting with possession of the suit premises. Inasmuch as this aspect is not considered, there is error of jurisdiction.

5] Mr. Patil, learned counsel for the respondent-landlord, submitted that there are concurrent findings of fact recorded by the

two Courts on the aspect of unlawful sub-letting. Mr. Rajabhai - respondent No.2 did not even enter the witness box. In such circumstances, no case is made out for exercise of revisional jurisdiction.

6] Having heard the learned counsel for the parties and perused the record, in my judgment, no case is made out to interfere with the impugned judgments and decrees in exercise of revisional jurisdiction under Section 115 of the Code of Civil Procedure, 1908 (CPC) .

7] In the suit, which was originally instituted, the allegation was that the original tenant Rukmani Jain had unlawfully subletting the suit premises to respondent No.2 i.e., M/s. Nakoda Handlooms. The applicant, did not step into the witness box. However, her son one Mr. Lalitkumar Jain, in his capacity as a Constituted Attorney stepped into witness box. The two Courts have rightly considered the material on record and concluded that this was a case where exclusive possession of the suit premises was parted by the applicant and the applicant was unable to discharge the onus of establishing that there was no sub-tenancy created. The landlord, produced on

record, an extract from the Registrar of Firm, indicating that respondent No.2 was dissolved some time in the year 1992. In the extract, it is indicated that the partners of the said Firm were Mr. Sanjay Jain and Smt. Rasila Jain. Although, very vaguely, a plea was sought to be set out that the applicant Rukmani Jain was carrying on business in the partnership with the said Firm. The said plea was neither substantiated nor was it established by any evidence whatsoever.

8] On the aspect of unlawful subletting, the Trial Court has noted that yet another Deed of Partnership in respect of M/s. Lali Glass Traders was produced on record. However, even the said Partnership comprised of Lalit Jain and Jitendra Kothari as partners. Although, Lalit Jain may be the son of the applicant Rukmani, the fact remains that the exclusive possession, was handed over to the Partnership Firm, in which, the applicant Rukmani was not even a partner. There is inconsistency in the defence set up by the applicant and this has rightly been taken note of by the two Courts.

9] The two Courts have correctly appreciated the material on record as also the legal position in such matters. Once it is

established that some stranger is in actual exclusive possession of the suit premises, then the onus is upon the original tenant to explain such circumstances. In the present case, the applicant has failed to discharge such onus. The concurrent findings of fact recorded by the two Courts are amply borne from the material on record and there is no perversity whatsoever in the record of the same. Accordingly, no case is made out for warranting interference under Section 115 of the CPC.

10] In view of the finding on the aspect of unlawful subletting, there is no reason to decide whether eviction decree was required to be made also on the ground of default in payment of rent.

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

(M. S. SONAK, J.)

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CERTIFICATE

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