

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 25 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 of eviction made by the Trial Court and the Appeal Court on 30 January 2008 and 22 November 2013 respectively.

2] The Trial Court has decreed the suit on the ground that the applicant had unlawfully sublet the suit premises to one Mr. Rajabhai, who had been impleaded as defendant No.2 in the suit, but rejected the ground of default in payment of rent. The Appeal Court has, however, decreed the suit 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, there is no case made out to exercise revisional jurisdiction and to set aside the decrees and eviction made by the two Courts.

7] On the aspect of unlawful subletting, the applicant, in his written statement admitted that respondent No.2 was put in possession of the suit premises, but took up some vague plea that this was not exclusive possession. Defendant No.2 did not step into witness box. The applicant-defendant No.1, in the course of his deposition was unable to establish that exclusive possession had not been handed over to defendant No.2. A case of oral partnership was attempted to be set up. However, in the course of evidence once again, it was admitted that there are no documents whatsoever to govern or explain the relationship between defendant Nos.1 and 2. The two Courts have held that the material placed on record not only establish the exclusive possession had been handed over to defendant No.2, but that defendant No.2 was in complete control of the suit premises and carrying on business activity therefrom. The two Courts after considering both the material evidence on record as

also legal position in this regard have rightly and concurrently recorded the finding of fact that the applicant had indeed unlawfully sublet the suit premises to the defendant No.2. The two Courts have rightly held that once a stranger is found in exclusive possession of the suit premises, it is for the original tenant to explain the circumstance. The onus in such case, naturally shifts upon the original tenant. In this case, it is apparent that the applicant has failed to discharge such onus. There is accordingly, no reason to interfere with the concurrent findings of fact on the aspect of unlawful subletting.

8] Since the impugned decrees are being sustained on the ground of unlawful subletting, there is no reason to decide the issue of whether the eviction should have also been ordered on the ground of default in payment of rent.

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

(M. S. SONAK, J.)

CERTIFICATE

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