

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CIVIL REVISION APPLICATION NO.60/2014

Dr. Madhukar s/o Rustum Parhad
...Versus...
Anjali Narendra Mankar and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri M.I. Dhattrak, Advocate for applicant
Shri R.L. Khapre, Advocate for non-applicant no.1

CORAM : Z.A. HAQ, J.
DATE : 03.02.2015

1. Heard Shri Dhattrak, the learned Advocate for the applicant and Shri Khapre, the learned Advocate for the non-applicant no.1. None appears for the non-applicant no.2.
2. This civil revision application is filed by the applicant challenging the order passed by the trial Court granting decree in favour of the non-applicant no.1 in the suit filed under Section 6 of the Specific Relief Act.
3. It is undisputed fact that the non-applicant no.1 occupied the suit house as tenant of the applicant. It is undisputed that the non-applicant no.1 occupied the suit house till the date of the incident. The dispute is about the date of the incident. According to the non-applicant no.1 she was forcibly evicted from the suit house on 11.5.2009. According to the applicant, the non-applicant no.1 voluntarily vacated the suit house on 12.5.2009.

4. The submission on behalf of the applicant is that the non-applicant no.1 has pleaded in paragraph nos.6 and 7 of the plaint filed by her that the cause of action for filing the civil suit had arisen on 11.5.2009 as she was forcibly evicted from the suit house without following the due process of law. It is submitted that there has been criminal prosecution against the non-applicant no.1 vide Summary Criminal Case No.414/2010 in which by the judgment dated 4.4.2013 the non-applicant no.1 is convicted for the offence punishable under Section 323 of the Indian Penal Code. Relying on the observations of the learned Magistrate in the judgment passed in the criminal case, the learned Advocate for the applicant has submitted that the incident had taken place on 12.5.2009 and not on 11.5.2009 and therefore the suit filed by the non-applicant no.1 on the basis that the cause of action had arisen on 11.5.2009 was not maintainable and consequently the judgment passed by the trial Court is unsustainable in law.

5. Shri Khapre, the learned Advocate for the non-applicant no.1 has submitted that it is undisputed that the non-applicant no.1 occupied the suit house as tenant of the applicant till the date of the incident. It is submitted that the incident had taken place on 11.5.2009 and not on 12.5.2009 as alleged by the non-applicant no.1. It is submitted that the judgment passed in the criminal case is challenged by the non-applicant no.1 in appeal which is pending and the non-applicant no.1 is released on bail. The learned Advocate has submitted that the learned trial Judge has recorded the findings on appreciation of the evidence which do not require any interference by this Court in the revisional jurisdiction. It is prayed that the revision application be dismissed with costs.

6. After hearing the learned Advocates for the respective parties and examining the record of the revision application, I find that the case of the applicant is that the non-applicant no.1 voluntarily vacated the suit house on 12.5.2009 and tried to leave the place stealthily along with her belongings to avoid the payment of the arrears of rent. On query, the learned Advocate for the applicant has stated that the non-applicant no.1 was in arrears of rent since 31.10.2008 i.e. for a period of about six months. The case of the applicant as reflected in paragraph no.13 of the written statement filed before the trial Court is that the applicant got information that the non-applicant no.1 had vacated the suit house and had left the place along with her belongings and on getting this information he locked the suit house and ran after the non-applicant no.1 to recover the arrears of rent and when he demanded the arrears of rent, there was a quarrel between the non-applicant no.1 and the applicant. However, the facts recorded in the judgment passed in the criminal case show that according to the applicant the incident had taken place opposite the circuit house i.e. near the suit house. The cause title of the plaint shows that the suit house is situated opposite the circuit house and this fact is not disputed by the applicant inasmuch as in the memo of revision also same address is given by the applicant. The discrepancy in the case pleaded by the applicant in the written statement before the trial Court and in the criminal case regarding the spot of the incident goes unexplained. The case of the applicant was that the original defendant no.2 who is son of sister-in-law of the applicant was residing in the suit house from 14.5.2009. These facts are dealt with by the learned trial Judge in paragraph no.27 of the

impugned order and after considering the evidence on the record the learned trial Judge has refused to rely on the case put forth by the applicant. Apart from the fact that the case tried to be made out by the applicant does not appeal to the judicious conscious, I see no reason to interfere with the judgment passed by the learned trial Judge which is based on appreciation of evidence on the record and the propositions of law laid down in the judgments which are considered by the learned trial Judge.

7. The submission made on behalf of the applicant that the suit filed by the non-applicant no.1 was not maintainable as according to the non-applicant no.1 the cause of action had arisen on 11.5.2009 and in the criminal case it is found that the incident had taken place on 12.5.2009, is misconceived. Apart from the fact that the incident which was the subject matter of criminal case cannot be linked with the cause of action as pleaded by the non-applicant no.1 in the suit, the submission made on behalf of the applicant is not acceptable in the facts of the present case.

8. Shri Dhatrak, the learned Advocate for the applicant has submitted that the non-applicant no.1 has admitted in her cross-examination that she has not gone to the suit house after the incident on 11.5.2009 and therefore the finding recorded by the learned trial Judge in paragraph no.29 of the impugned judgment that the dispossession of the non-applicant no.1 has taken place on 12.5.2009 is unsustainable. In view of my findings recorded earlier relating to the date of cause of action, the submission is inconsequential inasmuch the suit is filed within six months from the date of the incident.

9. In view of the above, the civil revision application is dismissed with costs, quantified at Rs.5,000/- (Rupees Five

Thousand Only) to be paid by the applicant to the non-applicant
no.1 till 30.03.2015.

JUDGE

Wadkar