

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

**CIVIL APPLICATION NO. 60 OF 2014
IN
CIVIL REVISION APPLICATION NO. 50 OF 2013**

Mr. Pralhad Jairam Bagoria ... Applicant.
V/s.
Saddikdin Mohammed (since deceased)
1 Salim Saddiquedin Shaikh & Anr. ... Respondents

Mr. S.P. Srivatawa for the Applicant.
Mr. R.R. Tiwari for the Respondents.
Mr. K.D. Raorane, master (Admin) of Court Receiver present.

**CORAM : K. K. TATED, J.
DATED : 11/03/2016**

P.C.:

- 1 Heard learned Counsel for the parties.
- 2 This application is preferred by landlord for appointment of Court Receiver in respect of suit premises i.e. Room No. 4 situated at plot no. 44, Kherwadi, Bandra (E), Mumbai – 400 051.
- 3 The applicant also prayed that the tenants may be directed to handover the possession of the suit premises to the landlord.
- 4 Few facts of the matter are as under:
 - a) The landlord filed R.A.E. & R suit No. 353/1065 of 1992 in the Court of Small Causes at Bombay for possession of suit property. That suit was decreed ex-parte by order dated 13.01.2004, directing

the tenant to handover the possession of the suit premises.

b) Thereafter, the tenants preferred Misc. Application No. 487 of 2004 for setting aside the ex-parte decree dated 13.01.2004 and also for condonation of delay. That application was rejected by the Small Causes Court by order dated 15.01.2010.

c) Being aggrieved by the order dated 15.01.2010, passed by the Small Causes Court, the tenants preferred Misc. Appeal No. 162 of 2010. That appeal was also dismissed by the Appellate Bench of the Small Causes Court by Judgment and Decree dated 31.10.2012.

d) Thereafter, the tenants preferred Civil Revision Application No. 50 of 2013 in this Court. In that application, the landlord also preferred Civil Application No. 394 of 2013 for directing tenants to handover the possession of the suit premises.

e) The Civil Revision Application alongwith Civil Application No. 394 of 2013 preferred by landlord decided by this court (Coram : R.G.Ketkar, J) by order dated 06.09.2013 dismissed the tenants' Civil Revision Application and allowed Civil Application No. 394 of 2013 preferred by the landlord. This Court directed tenants to handover the possession of the suit premises to the landlord.

f) Thereafter, the tenants preferred Civil Application No.416 of 2013 for stay of order passed by this court in Civil Revision Application. That Civil Application was allowed by this court by order dated 06.09.2013 and granted three months stay on condition that

tenants have to file usual undertaking within three weeks. Paragraphs 2 and 3 of the said order dated 06.09.2013, reads thus:

“2 By this application, the applicant has prayed for stay of order dated 3-9-2013 passed in civil application no. 394 of 2013 in Civil Revision Application No. 50 of 2013 for a period of three months from today subject to giving usual undertaking.

3. This civil application is granted in terms of prayer clause (a) subject to applicant giving undertaking in this court within a period of three weeks from date and serve in advance copy on the other side incorporating therein that: (i) that the Applicant is in possession and nobody else is in possession (ii) that the Applicant has neither created third party interests nor parted with possession with the suit premises (iii) that the Applicant will hereafter neither create third party interests nor part with possession.”

g) It seems that the tenant failed and neglected to file usual undertaking in this Court. Thereafter, the original tenant expired on 27.11.2014.

h) The legal heirs of the tenant preferred Civil Application No. 70 of 2016 on 29.02.2016 for declaration that in view of order dated 03.09.2014 in another suit of third party, passed by the Small Cause Court in R.A.E.Suit No. 644 of 2001, the applicant is not landlord of the suit premises and hence, the ex-parte decree passed by the Small Causes Court on 13.01.2004 and Judgment and Order dated 15.01.2010 in R.A.E.& R Suit No. 353/1065/1992 be quashed and set aside under the provision of Section 115 of Code of Civil Procedure, 1908 and for other reliefs. Prayer clauses (a) and (b) of Civil Application No. 70/2016, reads thus:

“a) that this Hon'ble Court be pleased to hold and declare that in view of the Hon'ble Small Causes Court having

held by way of Judgment & Orders dt. 3-9-14 in R.A.E. Suit No. 644 of 2001 that the respondent is not the landlord of the suit premises which are the same as that of the applicants, it is expedient in the interests of Justice that the ex-parte Decree dt. 13-1-04 & the Judgment & Order dt. 15-1-10 in R.A.E. & R. Suit No. 353/1065/1992 are cancelled, quashed and/or set-aside, under the provisions of Section 115 and/or under the inherent powers enshrined under Section 151 of the Code of Civil Procedure, to secure the ends of justice, or to prevent the abuse of process of law and/or the resultant miscarriage of justice;

b) that pending the hearing and final disposal of this application, the Hon'ble Court be pleased to stay the operation and effect of the ex-parte decree dt. 13-1-04 in Suit R.A.E. & R. No. 353/1065 of 1992 filed by the respondent in the Small Causes Court, Bandra, Mumbai, and all consequent proceedings for execution filed by the respondents against the applicants.”

i) In the present Civil Application No. 60 of 2014, this Court by order dated 03.08.2015 appointed Court Receiver to take possession of the suit premises from the respondents to this application and/or any one else found in possession with directions that the tenants/legal heirs can occupy the suit premises till further orders.

j) Thereafter, by order dated 27.08.2015, the matter was adjourned on ground that son of tenant Juber Salim Shaikh appeared party in person and submitted that SLP preferred in the Apex Court. After hearing party in person, this Court directed that matter to be placed on board for further consideration on 20.10.2015.

k) On 20.10.2015, Mr. Juber Salim Shaikh, son of the deceased tenant made a statement that SLP in the Apex Court against the order passed by this Court in Civil Revision Application No. 50 of

2013 will be listed in the month of November 2015.

l) On his request, as a last chance, matter was adjourned to 19.11.2015.

m) On 22.02.2016, the legal heirs of original tenant, Mr. Juber Shaikh appeared and made a statement before this Court that his Advocate Mr. Prasad Rao is not available. Hence, matter to be adjourned. On his request, the matter was adjourned for one week as a last chance.

5 The learned Counsel for the Applicant submits that though this Court granted time to the tenants to vacate and handover the possession of the suit premises, they failed and neglected to do so. He further submits that Civil Application No. 416 of 2013 preferred by the tenant for extension of stay with following prayer:

“(a) That the Hon'ble Court may be pleased to stay its order for 3 months dated 03.09.2013, passed in civil application No.394/2013 in C.R.A.No.50/2013 in respect of the suit premises i.e. Room No.4, situated on the plot No.44, Herwadi, Bandra (E), Mumbai – 400 051 in the interest of justice to enable the applicant to challenge the order before supreme court on usual undertaking.

(b)

(c)”

6. That was allowed on condition that tenants have to file usual undertaking before this Court. He further submits that the tenants failed and neglected to file the undertaking before this court within stipulated time. He further submits that till today the said undertaking

is not filed by the tenant and/or his legal heirs. He submits that though the tenants made a statement before this court that they have filed proceeding in the Apex Court, but there is no stay and/or any order of the Apex Court. Hence, in the interest of justice, this Hon'ble Court be pleased to direct the Court Receiver to take possession of the suit premises from the respondents to this civil application and/or any one else found in possession of the suit premises.

7 On the other hand, the learned Counsel for the Respondents tenants vehemently opposed the present Civil Application. He submits that the landlord obtained Judgment and Decree from the Trial Court as well as by this Court by committing fraud. He submits that the applicant is not landlord of the suit premises.

8. The learned counsel for the respondent tenant submits that the tenants preferred Civil Application No. 70 of 2016 for declaration that the Judgment and Decree passed by the Trial Court in favour of landlord to be set aside in view of subsequent development i.e. judgment and order dated 03.09.2014 passed by the Small Causes Court in R.A.E.Suit No. 644 of 2001 against another tenant. He submits that the Small Causes Court by oral Judgment dated 03.09.2014 in R.A.E. Suit No. 644 of 2001 filed by the landlord against the other tenants held that the applicant failed to prove ownership as landlord of suit premises in another matter situated in the same area. He mainly relied on paragraph 7 of the judgment dated 03.09.2014 passed by the Small Causes Court in R.A.E. Suit No. 644 of 2001, which reads thus:

“7) Even if the adoption deed filed by the plaintiff is considered for appreciate the arguments advanced by the

plaintiff, the adoption does not appear to be legal and valid one, as the age of the plaintiff at the time of his adoption was 32 years and the Hindu Adoption and Maintenance Act provides that the person who is going in adoption should be less than 15 years. However, this is not a competent court to make any observations regarding validity and legal adoption of the plaintiff. Thus, considering the evidence on record, I am of the view that there does not exist a landlord-tenant relationship between the plaintiff and defendant. Therefore, I answer Issue No. 1 in the negative.”

9 The learned Counsel for the tenants submits that if the applicant is not owner/landlord of the suit premises, there is no question of granting any relief in the present Civil Application directing the Court Receiver to take possession of the suit premises. He submits that the tenants are residing in the suit premises for last 40 years. He further submits that the tenants already preferred Review Petition (Diary) No. 7255 of 2016 in the Apex Court. He submits that Review Petition is due for admission. Same may come up for hearing within 3 weeks from today. Hence, matter to be postponed till the decision of the Apex Court in the Review Petition.

10 I heard both the sides at length. It is to be noted that in the present proceeding, the Small Causes Court as well as Appellate Bench of the Small Causes Court and this Court held that the landlord is entitled for possession of the suit premises. When this court dismissed the Civil Revision Application No. 50 of 2013 by order dated 03.09.2013, this Court directed the tenants to handover the possession of the suit premises to the landlord. Thereafter, the tenants preferred Civil Application No. 416 of 2013 for extension of time/stay. That application was allowed by this Court by order dated 06.09.2013 on

condition that the tenants have to file usual undertaking within three weeks. Office note shows that the tenants failed and neglected to file usual undertaking within stipulated time and till today.

11 In the present Civil Application, considering the facts and circumstances of the present case, this Court appointed Court Receiver to take possession of the suit premises. As of today, there is no stay from the Apex Court in favour of the tenants for handing over the possession of the suit premises to the landlord. The objection raised by the tenants about the ownership and/or status of the landlord/applicant, that can be decided in Civil Application No. 70 of 2016 after hearing both the sides. But as of today, the tenants failed and neglected to comply the order passed by this Court. Even the tenants have not filed usual undertaking as per the order passed by this Court in Civil Application No. 416 of 2013.

12 Considering this facts, I am of the opinion that applicant has made out case for allowing this Civil Application.

13 Hence, following order is passed:

a) Civil Application is allowed in terms of prayer clause (b), which reads thus:

“b) That this Hon'ble Court be pleased to appoint the Court Receiver High Court Bombay with direction to take the possession of the suit premises i.e. Room No. 4, situated on the Plot No. 44, Kherwadi, Bandra (E), Mumbai 400 051 from the Petitioners (original Defendant) and/or anyone else found in possession of the suit premises and to handover the possession of the suit premises to the applicant.”

- b) This order is stayed for three weeks.
- c) Civil Application stands disposed of accordingly.

(K.K.TATED, J.)