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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.578 OF 2015

Sanghi Motors (Bmbay) Ltd. ..Applicant.

V/s.

Mrs.Hermian D'cruz (Nee Luis) and Ors. ..Respondents.

Mr.Nikhil Wadikar i/b. Nandu Pawar for the Applicant.

CORAM : N.M.JAMDAR, J.

DATED : 19 DECEMBER, 2016

ORAL ORDER

The applicant has challenged the concurrent judgments and decree passed in R.A.E. Suit No.899/2001 by the Small Cause Court, Mumbai and in Appeal No.13/2007 by the Appellate Bench of the Small Cause Court, Mumbai wherein the suit filed by the Respondents-landlord is decreed and the appeal filed by the Applicant is dismissed.

2. The suit was instituted by the Respondent-landlord on the ground that the Applicant had changed the user of the premises, they have carried out constructions in the suit property without the permission of the Respondents-landlords and have committed breach of clause (o) of section 108 of the Transfer of

Property Act, 1882. The learned counsel for the Applicant submitted that both the Courts below have not considered the lease agreement entered into between the parties dated 10 November, 1961 and the indenture lease dated 26 March 1994. He submitted that clause (b) and (i) of the said document clearly permitted the Applicant to raise structures on the suit property and also to use the same for residential purpose. He submitted that in view of the this clear permission granted by the Respondents-landlords, a suit could not have filed on the basis that the Applicant has unlawfully constructed on the suit property and caused breach of the provisions of the Transfer of Property Act.

3. This contention was advanced in both the Courts and the same has been rejected. The Respondents have issued notice to the Applicant on 28 November, 1998 calling upon the Applicant to vacate the premises in which the Respondents have referred to clause 6(ii) of the Lease dated 26 March, 1964, which reads thus:-

“6(ii) That the Lessee shall be entitled to put up any further construction or make any structural alterations in any of the buildings forming part of the demised premises subject to its obtaining the approval of the plans of such additions or alterations by the Lessor's architects and which approval shall not be unreasonably withheld by the Lessor. ”

4. Therefore, if the argument of the Applicant is to be accepted that he has acted as per the terms of the lease, then,

condition 6(ii) will have to be complied by the Applicant. This term clearly stipulates that any further construction will be subject to obtaining the approval of the lessor's architects. In both the Courts below as well as in this Court, the Applicant has relied upon a letter dated 2 September, 1996 purported to be issued by the Respondent to the Applicant giving the Applicant free charter to obtain all such consents and put up the construction which the Applicant desires. The Respondents have contested this letter on the ground that it was forged and have relied upon the evidence of the Handwriting Expert. It is the contention of the learned counsel for the Applicant that the report of the Handwriting Expert cannot be believed as he has not compared the signature with the documents which are admitted, though the evidence states so. He submitted that the Courts have ample powers to call for additional report. This submission also cannot be accepted in view of clause 6(ii) of the Lease Deed and the plea taken by the Applicant that necessary permission has been granted. Once the Respondent had contested the said letter on the ground that it was forged and examined a Handwriting Expert, as rightly observed by the Appellate Bench, the Applicant could have taken adequate steps and could have got the document examined by some other Handwriting Expert. In the circumstances, the report of the Handwriting Expert has been accepted. The acceptance of this evidence and the discarding the document by both the Courts, cannot be stated to be perverse.

5. Even otherwise, the so called permission, which is a stand alone document, appears contrary to be the consistent stand of the Respondents-landlord that the construction was without permission and contrary to the terms of the lease. It also does not stand to reason that in spite of specific clause in the lease, a free charter would be given to the tenant for further construction or to make structural changes without the landlord having any say in the matter. Therefore, the conclusions drawn by both the Courts that the letter was forged stands to reason in normal course of human conduct. No other argument was advanced. In the circumstances, there is neither any error in the appreciation of evidence by both the Courts nor there is any error of jurisdiction. The Revision Application cannot be entertained and is rejected.

(N.M.JAMDAR, J.)