

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

CIVIL REVISION APPLICATION NO. 18 OF 2015

Shri. Gopal Mahadeo Karve,
Through Power of Attorney Holder

Shri Sanjay Gopal Karve

... Applicant

V/s.

Smt. Anjanadevi S. Singhavi

... Respondent

Mrs. Chandralekha Benke for the Applicant.

Mr. Anil Agarwal i/b D.G. Kothari for the Respondent.

CORAM : K. K. TATED, J.

DATED : 02/05/2016

P.C.:

. Heard learned Counsel for the parties.

2 This Revision Application is preferred by plaintiff landlord challenging the concurrent finding of facts recorded by both the Courts below directing plaintiff to restore the possession of suit premises i.e. Shop No. 2 Priyadarshini Building, situated at Phadake Road, Dombivli (E), Tal. Kalyan, Dist. Thane to the defendant tenant.

3 In the present proceeding, the plaintiff filed suit No. 250/05 for vacant and peaceful possession of the suit premises from the defendant. That suit was decided *ex-parte*. The plaintiff filed Regular Darkhast No. 65 of 2006. In the said Darkhast, the plaintiff recovered the possession of the suit premises. The defendant preferred M.A. No. 2 of 2007 for condonation of delay in filing the application for setting aside the *ex-*

parte decree and restoration of suit. That application for condonation of delay was allowed and thereafter the *ex-parte* decree was set aside. Hence, the defendant preferred application below Exh.1 in M.A.No. 176 of 2009 under Section 144 of Code of Civil Procedure, 1908 for restitution of suit property. That application was allowed by Joint Civil Judge, Junior Division, Kalyan by order dated 27.02.2014.

4 Being aggrieved by the order below Exh.1 in M.A. No. 176 of 2009, plaintiff landlord preferred Civil Appeal No. 40/2014 in the Court of District Judge-2, Kalyan. The Appellate Court dismissed the appeal preferred by the plaintiff and confirmed the order passed by the Joint Civil Judge, Junior Division, Kalyan. Hence, the present Civil Revision Application.

5 The learned Counsel for the plaintiff submits that both the courts below erred in coming to the conclusion that the defendant is entitled to restitution of possession of the suit premises under Section 144 of Code of Civil Procedure, 1908. She submits that during the pendency of present proceeding, the plaintiff landlord inducted other tenant. She further submits that even the plaintiff filed suit for recovery of possession of the suit property from the person who is in possession as of today. She submits that though the plaintiff pleaded before both the courts below that plaintiff is not in possession of the suit premises, hence, there is no question of handing over the possession to the defendant, in spite of that, both the courts below allowed the defendants' application. Hence, order passed by both the courts below be set aside.

6 On the other hand, the learned Counsel for the respondent defendant vehemently opposed the present revision application. He submits that there is concurrent findings of facts recorded by both the courts below. Hence, there is no question of entertaining the present Civil Revision Application. He submits that as provision of Section 144 of Code of Civil Procedure, 1908 if *ex-parte* order is set aside, then the tenant is entitled for restitution of suit premises. He submits that both the courts below considering the provision of Section 144 and the law declared by the Apex Court in the matter of ***Vinayak Swami V/s. Rameshchandra, AIR 1966 SC 948***. Hence, there is no question of entertaining the present Civil Application.

7 I heard both the sides at length. In the present proceeding, the *ex-parte* decree passed by the Trial Court was set aside on the defendants' application. Thereafter, the defendants filed application under Section 144 of Code of Civil Procedure, 1908 for restitution of the possession of the suit premises. Considering the evidence on record, both the courts below held that defendant has made out case for possession of the suit premises.

8 The Apex Court in the matter of ***Gurjoginder Singh vs. Jaswant Kaur (Smt.) and Another, 1994(2) SCC 368*** held that if a *ex-parte* eviction decree is passed against the tenant and subsequently same is set aside and eviction proceedings revived, in that case, tenant can file application under section 144 of the Civil Procedure Code, 1908 for restoration and possession and same can be allowed.

9 In another authority the Apex Court in the matter of ***Sushil Kumar Mehta vs. Gobind Ram Bohra (Dead) through Lrs., (1990) 1 SCC 193*** held that even if a decree of eviction is executed during the pendency of Special Leave Petition, tenant can make application under section 144 of the Civil Procedure Code, 1908 for possession.

10 As the plaintiff failed to make out any error committed by both the courts below, I do not find any reason to entertain the present Civil Revision Application.

11 Hence, Civil Revision Application stands rejected.

(K.K.TATED, J.)