

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.111 OF 2016**

1. Ramlakhan Bhaiya Dhuria ..Applicants
(since deceased);
and Ors.

Vs

1. Ranchhoddas Lotwala
Foundation and Ors. .. Respondents

Mr. Harish R. Pawar i/b Mahesh Dhuri, Advocate for Applicants.
Ms. Neha Mehta, Advocate for Respondents.

CORAM : R.G.KETKAR,J.
DATE : 08/06/2016

PC:

1. Heard Mr. Harish Pawar, learned counsel for the applicants and Ms Neha Mehta, learned counsel for the respondents at length. Leave to delete respondent no.3(A) is granted. Amendment shall be carried out forthwith.

2. By this application under Section 115 of the Code of Civil Procedure, 1908, (for short, 'C.P.C.'), the applicants have challenged the Judgment and decree dated 7.1.2008 passed by the learned Judge, presiding over Court Room No.17 of the Court of Small Causes at Bombay in R.A.E. Suit No.1997 of 1998 as also the Judgment and decree dated 1.10.2015 passed by the Appellate Bench of Small Causes Court at Bombay in Appeal No.214 of 1998. By these orders, the Courts below decreed the

suit instituted by the respondents and held that original defendant no.1-Ramlakhan Bhaiya Dhuria was inducted on service tenancy basis.

3. In support of this Application, Mr Pawar strenuously contended that the Courts below committed serious error in decreeing the suit on the basis of letters dated 6.8.1997 and 20.11.1997 purportedly addressed by original defendant no.1 Ramlakhan. The Courts below also relied upon the purported affidavit dated 30.6.1998 made by original defendant no.1 Ramlakhan. He submitted that earlier original defendant no.1 was tenant in respect of the premises situate at Room no.20, 1st floor, House no.55, R.L.Trust Building. S.V.P Road, Mumbai 400004. He was asked to vacate that premises and was shifted to the present premises. Original defendant no.1 was a contractual tenant and the rent was deducted from his salary. The applicants are legal representatives of original defendant no.1 and as such are contractual tenants. The Courts below, however, erroneously held that it was a case of service tenancy and not a contractual tenancy. He, therefore, submitted that application requires consideration.

4. On the other hand, Ms Mehta supported the impugned orders. She submitted that the Courts below held that the respondents-plaintiffs have duly proved letters dated 6.8.1997

and 20.11.1997. The Courts below after appreciating the evidence on record have concurrently held that it was a case of service tenancy and not a contractual tenancy.

5. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. After appreciating the evidence on record, the Courts below have concurrently held that the respondents-plaintiffs have duly proved the contents of letters dated 6.8.1997 and 20.11.1997. The Courts below and in particular the Appellate Court, held that from the Written Statement filed by defendants no. 2 to 5 as also oral evidence of D.W.1, they have admitted that the deceased original defendant no.1 was in the employment of the plaintiff-trust as a peon.

6. In paragraph 14, the learned trial Judge observed that PW 2 proved the letters at Exhibit-C and Exhibit-D executed by original defendant no.1 in favour of the plaintiff-trust. By the said letters, the plaintiffs proved that defendant no.1 had resigned from the services of the plaintiffs due to his old age. The defendants contended that the plaintiffs had fabricated the thumb impression of defendant no.1 on these letters. However, the defendants did not make any attempt at any point of time for sending the documents to the handwriting expert for his opinion. PW 2 further deposed that on 30.6.1998, affidavit was executed

by original defendant no. 1 before notary public. The execution of the affidavit by original defendant no.1 as well as his thumb impression were identified by Advocate Shri R.K.Dubey of Sultanpur. On the said affidavit, there is photograph of original defendant no.1 on which there is signature and office seal of the notary public. In the cross examination, defendant no.2 had admitted that the said photograph is of defendant no.1.

7. Mr. Pawar submitted that original defendant no.1 was a contractual tenant in respect of Room no.20 of House No.55, S.V.P Road, Mumbai 400 004. He was asked to vacate the said premises and shift to the present premises. He submitted that rent in respect of the suit premises at S.V.P Road and the suit premises were deducted from the salary of original defendant no.1.

8. The Courts below considered this aspect. In the first place, it was held that there are no rent receipts in the name of the original defendant. Secondly, at no point of time, the defendants called upon the plaintiffs to produce accounts, particularly salary sheets, to substantiate that from the salary of defendant no.1, the plaintiffs used to deduct the rent amount. The salary sheets produced by defendant no.2 at Exhibits 12 and 13 did not indicate that any rent was deducted from the salary of original defendant no.1. Thus, the Courts below, after appreciating the

evidence on record, have concurrently held that original defendant no.1 was not a contractual tenant either in respect of the premises at S.V.P Road or the suit premises. It was a case of service tenancy. After considering the material on record, I do not find that the Courts below committed any error in arriving at that conclusions. Mr. Pawar was not in a position to demonstrate that the findings recorded by the Courts below are perverse being based on no evidence or that on the basis of evidence on record, no reasonable person would have come to the conclusions arrived at by the courts below. In the light of the aforesaid discussion, I do not find that the applicants have made out any case for invocation of powers under section 115 of C.P.C. In the result, Application fails and the same is dismissed.

(R.G.KETKAR, J.)