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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL (STAMP) NO.2792 OF 2016
WITH
CIVIL APPLICATION NO.242 OF 2016

Rajendra Suryakant More)
Age – 58 years, Occupation – Service)
Residing at Flat No.9, Jasmin Society)
D'Souza Colony, College Road, Nashik.) ...Appellant

....Versus....

1. M/s.Fixolite Wires & Cables Pvt. Ltd.,)
A company registered under the)
Companies Act, having its office at)
F/132, MIDC, Ambad, Nashik)
2. Arjun Ramchandra Khetwani)
Age 74 years, Occupation : Business)
Residing at 801, Avinash Apartment)
Union Park, Road No.3, Khar (West))
Mumbai.) ...Respondents

Mr.Atit Shukla i/b Mr.Rohan Shukla for the Appellant.

Mr.Harish Pawar i/b Mr.L.S. Sharma for the Respondents.

CORAM : R.D. DHANUKA, J.
DATE : 17TH FEBRUARY, 2016.

ORAL JUDGMENT :-

1. By this second appeal filed by the appellant under section 100 of the Code of Civil Procedure, 1908, the appellant (original defendant) has impugned the order and judgment dated 17th October,

2015 passed by the Principal District Judge, Nashik dismissing Regular Civil Appeal No.114 of 2014 and allowing the entire claim for recovery of damages made by the plaintiffs with costs. Some of the relevant facts for the purpose of deciding this second appeal are as under :

2. The original plaintiff no.1 is the company registered under the provisions of the Companies Act, 1956 i.e. private company. The plaintiff no.2 is the director of the said company. The wife of the plaintiff no.2 deceased Malti Khetwani was a shareholder of the said company and had purchased the suit flat in the year 1981. The said Malti Khetwani died on 7th August, 2011. The shares and the said flat were thereafter transferred by the society in the name of the plaintiff no.2.

3. Insofar as the appellant (original defendant) is concerned, admittedly he was working as an employee with the plaintiff no.1 company during the period between 3rd April 1996 and 31st May, 2004. It was the case of the plaintiffs that when the defendant was in service of the plaintiff no.1 company he was given the suit flat for use without any consideration. Since the defendant did not hand over possession of the suit premises after his retirement, the plaintiffs filed a suit for recovery of possession and for recovery of damages at the rate of Rs.15,000/- per month since 1st June, 2004 till the date of actual delivery of possession.

4. The suit was resisted by the defendant by raising various issues, including issue of the jurisdiction of the learned trial Judge. The learned trial Judge framed eight issues for consideration. The parties led oral evidence before the learned trial Judge. The learned

trial Judge by an order and judgment dated 31st Jan, 2014 partly decreed the said suit and directed the defendant to hand over peaceful and vacant possession of the suit premises to the plaintiffs within two months from the date of the said order. The learned trial Judge however, dismissed the claim for damages for three years prior to the date of the institution of the suit. Insofar as *mesne-profits* is concerned, the learned trial Judge directed that a separate enquiry be held under Order 20 Rule 12 of the Code of Civil Procedure, 1908.

5. Both the parties impugned part of the judgment and decree passed by the learned trial Judge by filing two separate appeals before the District Judge, Nashik.

6. The lower appellate Court by an order and judgment dated 17th October, 2015, dismissed the appeal filed by the original defendant. Insofar as the appeal filed by the plaintiffs is concerned, the said appeal came to be allowed. The lower appellate Court also was pleased to set aside the order of dismissal of the claims made by the plaintiffs for recovery of damages and granted the said relief.

7. The original defendant has impugned the said order and judgment dated 17th October, 2015 in this second appeal.

8. Learned counsel for the appellant (original defendant) submits that the suit filed by the original plaintiffs itself was without jurisdiction. He submits that admittedly the suit flat was standing on the name of the wife of the plaintiff no.2. He submits that neither plaintiff no.1 company nor plaintiff no.2 were the landlords in respect of the suit property. It is submitted that the suit for recovery of possession of the said property could be filed only by the wife of the

plaintiff no.2.

9. It is submitted by learned counsel that the learned Civil Judge, Junior Division, Nashik had no jurisdiction to entertain and try the suit filed by the plaintiffs in view of the provisions of section 22 of the Maharashtra Rent Control Act, 1999 (M.R.C. Act, 1999). He submits that though there was no agreement in writing between the landlord and tenant, the suit for recovery of possession could be filed only before the competent authority under section 22 of the M.R.C. Act, 1999 and such suit did not attract the provisions of section 16(1) (f) of the M.R.C. Act, 1999.

10. Insofar as the claim for recovery of damages is concerned, it is submitted that though the learned trial Judge has rightly dismissed the suit for damages, the lower appellate Court has allowed the said claim at the rate of Rs.15,000/- per month without there being any evidence on record.

11. Learned counsel for the original plaintiffs on the other hand invited my attention to the findings recorded by the learned trial Judge as well as lower appellate Court. He submits that the defendant in his cross-examination had admitted that since 1980-1981 he was in the employment of the plaintiff no.1 company till closure of the company and the suit property was given to him by the plaintiff no.1 company for his residence. The plaintiff no.1 company never recovered any rent from him. No rent was agreed by and between the parties. The car was provided by the plaintiff no.1 company to the defendant. The defendant also admitted that he never paid any rent to Malti Khetwani, wife of the plaintiff no.2 and he was not even acquainted with her. The defendant also admitted that he had falsely raised the

contention in the written statement that he was paying rent to Malti Khetwani. The defendant also admitted that as he was not in service, he had no right to retain the possession of the suit property.

12. Learned counsel for the plaintiffs submits that section 22 of the M.R.C. Act, 1999 did not apply to the suit for recovery of possession filed by the plaintiffs. He submits that the defendant was an employee of the plaintiff no.1 company. The suit premises was allowed to be occupied by the plaintiff no.1 in view of he being in service of the said company without payment of any rent or any other compensation. He submits that after demise of the wife of the plaintiff no.2, the suit property was transferred in the name of the plaintiff no.2 who was admittedly the director of the plaintiff no.1 company. He submits that since there was no writing between the plaintiffs and the defendant creating any tenancy in favour of the defendant in respect of the suit property, the competent authority did not have jurisdiction to entertain any such proceedings filed by the plaintiffs. He submits that admittedly when the suit flat was allowed to be occupied by the plaintiffs in favour of the defendant, the provisions of the M.R.C. Act, 1999 were not even enacted. He submits that the said provisions apply with prospective effect.

13. It is submitted by the learned counsel that in the territory of Nashik, there was no separate Small Causes Court and thus the proceedings for recovery of possession by the plaintiffs under section 16(1)(f) of the M.R.C. Act, 1999 could be filed only in the Court of the learned Civil Judge, Junior Division, Nashik. He submits that all these submissions made by the learned counsel for the defendant are already negated by this Court in various judgments, which are dealt with by the courts below at great length.

14. Insofar as the claim for damages allowed by the lower appellate Court is concerned, the learned counsel for the plaintiffs fairly concedes that there was no satisfactory evidence produced by the plaintiffs for quantifying the claim of Rs.15,000/- per month towards damages.

15. Insofar as the first submission of learned counsel for the defendant that the suit could not have been filed by the plaintiffs at all is concerned, there is no dispute that the suit flat initially belonged to the wife of the plaintiff no.2, who was a share holder of the plaintiff no.1 company. After the demise of the wife of the plaintiff no.2, the suit flat was transferred in the name of the plaintiff no.2. It is also not in dispute that the defendant was an employee of the plaintiff no.1 company and during the tenure of his service in the employment of the plaintiff no.1, the defendant was provided the suit flat for the purpose of residence. Since the defendant refused to hand over vacant possession of the suit flat, the plaintiffs filed a suit for recovery of possession. In my view, even if the flat was not transferred in the name of the plaintiff no.1 company, who was the employer of the defendant, the suit for recovery of possession was still be maintainable. The suit flat was given by both the plaintiffs to the defendant for accommodation during the service tenure of the defendant. The plaintiff no.1 could have taken the suit property on hire and could have given the same to the defendant for accommodation. In my view, there is no substance in the submission made by learned counsel for the defendant that the suit could not have been filed by the plaintiffs for recovery of possession or that the suit for recovery of possession could be filed only by the wife of the plaintiff no.2. The defendant could not prove any relationship of

landlord – tenant between wife of the plaintiff no.2 and himself.

16. Insofar as the issue of jurisdiction raised by the defendant is concerned, admittedly there was no writing entered into between the plaintiffs and the defendant and the suit flat was handed over to the defendant for accommodation, he being an employee. No terms and conditions were agreed between the parties for payment of rent, royalty or any other compensation. The defendant in his cross-examination admitted that there was no such writing entered into between him and the plaintiffs and also with the wife of the plaintiff no.2. The defendant also admitted that he had raised a false contention in the written statement that he was paying rent to the wife of the plaintiff no.2. Upon making enquiry by this Court, learned counsel for the defendant upon instructions admitted that the defendant had not filed any suit for declaration for the alleged tenancy against the plaintiffs or the wife of the plaintiff no.2 till date.

17. A perusal of section 22 of the M.R.C. Act, 1999 would clearly indicates that the proceedings for recovery of possession in case of tenancy created during the service period would lie before the competent authority only if there was any agreement between the landlord and employee creating service tenancy in respect of the premises or any part thereof. Admittedly there was no such writing executed between the parties. In my view section 22(2) of the M.R.C. Act, 1999 will stand attracted only if the conditions of section 22(1) of the M.R.C. Act, 1999 are satisfied. In my view, thus there is no substance in the submission made by learned counsel for the defendant that the learned Civil Judge, Junior Division, Nashik had no jurisdiction to entertain the suit and/or that the same could be tried only by the competent authority.

18. Admittedly, there is no Small Causes Court at Nashik. In view of section 33 of the M.R.C. Act, 1999, the learned Civil Judge, Junior Division, Nashik having jurisdiction in the area in which the premises is situated only could have exercised jurisdiction to entertain the suit. In my view, the provisions of section 16(1)(f) of the M.R.C. Act, 1999 which provided that the landlord may file a suit for recovery of possession where the premises were let to the tenant for use as a residence by reason of he being in the service or employment of the landlord, and that the tenant has ceased, whether before or after the commencement of M.R.C. Act, 1999 stood attracted to the facts of this case. The suit thus filed by the plaintiffs for recovery of possession under section 16(1)(f) read with section 33 of the M.R.C. Act, 1999 was maintainable and was within the jurisdiction of the Civil Judge, Junior Division, Nashik exclusively.

19. Insofar as the submission of learned counsel for the defendant that though there was no oral evidence led by the plaintiffs for recovery of damages against the defendant is concerned, learned counsel appearing for the plaintiffs have no objection if the matter is remanded back insofar as that prayer granted by the lower appellate Court is concerned. The statement is accepted. Even otherwise a perusal of the order passed by the lower appellate Court insofar as grant of damages is concerned, indicates that no evidence was led by the plaintiffs for recovery of damages. The lower appellate Court has allowed the said claim merely on the basis that the plaintiffs had made a claim for recovery of *mesne-profits* in the sum of Rs.15,000/- per month, and thus the learned trial Judge ought to have granted the damages at the rate of Rs.15,000/- per month. This part of the order, in my view, is based on no evidence and thus deserves to be set

aside.

20. I therefore, pass the following order :-

a). The decree passed by the learned trial Judge and confirmed by the lower appellate Court against the defendant for handing over vacant and peaceful possession of the suit premises is upheld. The appeal filed by the appellant impugning that part of the order and decree is dismissed.

b). The order passed by the lower appellate Court allowing the claim for damages is set aside. The matter is remanded back to the learned trial Judge for adjudication of the claim for damages afresh in accordance with law. The learned trial Judge shall consider the said claim after rendering an opportunity to both the parties to lead oral as well as documentary evidence and shall pass a fresh order in accordance with law. The learned trial Judge shall not be influenced by the observations made by the lower appellate Court insofar as the claim for damages is concerned. The learned trial Judge shall make an endeavor to dispose of this part of the claim within six months from the date of commencement of the oral evidence.

c). The second appeal is partly allowed in aforesaid terms. No order as to costs.

21. In view of the disposal of the second appeal, the civil application does not survive and is accordingly disposed of. No order as to costs.

22. At the request of learned counsel for the appellant (original defendant), the plaintiffs shall not execute the decree for possession against the defendant for a period of eight weeks from today. During this period of eight weeks, the appellant shall not create any third party rights or hand over possession in respect of the suit flat to any other party.

(R.D. DHANUKA, J.)