

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Amk

CIVIL REVISION APPLICATION NO. 213 OF 2014

Uday Shivrama Shetty

...Applicant

Versus

Upendrasinh Vijaysinh Kasgiwale

...Respondent

.....

Mr. S. B. Prabhavalkar i/b Mr. M. P. Bhansali for the Applicant.

Mr. P. N. Shah for the Respondent.

CORAM : R. M. SAVANT, J.

DATE : 1st MARCH, 2016.

P. C. :

1. The revisionary jurisdiction of this Court is invoked against the judgment and order dated 17.01.2014 passed by the Appellate Bench of the Small Causes Court, Mumbai by which the Appeal in question being Appeal No. 467/2001 filed by the plaintiff came to be dismissed and resultantly the decree passed by the Trial Court dated 03.05.2001 in R.A.E. & R Suit No. 1650/4997/1988 came to be confirmed.

2. The applicant herein is the person who was let out two rooms admeasuring 10x12 and 8x10 ft by the father of the respondent herein who at the relevant time was acting on behalf of respondent (original landlord). The said rooms were let out in the year 1959 as per the averments made in the plaint. It is the case of

the plaintiff that he had let out the said rooms to the defendant i.e. the applicant herein for residential purposes. However, in the year 1983 when the suit property came into his hands after the Court Receiver was discharged that he realized that the defendant was using the suit premises for the purposes other than for which they were let out. The plaintiff thereafter filed the suit in question for eviction of the defendant being R.A.E. & R. Suit No. 1650/4997/1988. The defendant filed his written statement and denied the case of the plaintiff. It was the case of the defendant that the suit premises being the said two rooms were let out to him for the purposes of his servants for sleeping and for storing goods of his hotel. It was his case that he was running a hotel by the name and style of Gopal Krishna Boarding House at Haroon Rangari Chawl, Dr. N. C. Jawle Marg, Dadar, Mumbai. The said building is adjacent to the building wherein the suit premises are located. On the basis of the rival pleadings, the Trial Court framed the issues revolving round whether there was a change of user of the suit premises by the defendant from residence to business and whether the plaintiff was entitled for the vacant and peaceful possession of the suit premises from the defendant.

3. The parties led both oral and documentary evidence in

respect of their respective assertions. The plaintiff had examined himself and had also examined one other witness whereas the defendant had also examined himself and one other witness. It has come in the evidence of the plaintiff that he was present when the negotiations for letting out the rooms between his father and the defendant took place in the year 1959. It has come in his evidence that the suit premises were let out only for the purposes of residence. It has also come in his evidence that he was residing in America since prior to 1959 but was making a yearly visit to India. Insofar as his cross-examination is concerned, his case that he was personally present in the negotiations which took place between the parties before the suit premises were let out wherein he was present, has not been dented. In fact, it is pertinent to note that on behalf of the defendant only one question was put to him as to whether he has any material to show that he had visited India in the year 1959 to which his answer was yes. Insofar as the evidence of DW-1 i.e. the defendant is concerned, it has come in his evidence that he is carrying on business in the name and style of Gopal Krishna Boarding House at Haroon Rangari Chawl, Dr. N. C. Jawle Marg, Dadar, Mumbai which is the adjacent building to the building wherein the suit premises are located and the area of the said hotel is about 300 sq. ft.

It has also come in his evidence that he is residing since prior to the year 1951 in Haroon Rangari Chawl prior to the suit premises being let out to him. Based on the said evidence it was sought to be contended on behalf of the defendant that since he was residing in some other premises in the near vicinity therefore his case that the present premises were let out to him for the purposes of his servants and the storage of the goods was required to be accepted.

4. The Trial Court on the basis of the material on record which included the oral evidence as well as the documentary evidence on record which was produced by the parties in the form of rent receipts etc. came to conclusion that the plaintiff had proved that the suit premises were let out to the defendant for residential purposes and that the defendant by using them for the purposes of his servants and for storage has changed the user of the premises.

5. Insofar as the ground of arrears of rent is concerned, the said ground was not pressed by the plaintiff, the Trial Court accordingly deemed it appropriate to decree the suit on the ground of change of user by its judgment and order dated 03.05.2001. The defendant carried the matter to the Appellate Bench of the Small Causes Court by way of Appeal being No. 467/2001. The Appellate Bench of the Small Causes Court on a re-appreciation of the material

on record and also having regard to the findings recorded by the Trial Court did not deem it appropriate to interfere with the decree passed by the Trial Court. The Lower Appellate Court reiterated the findings of the Trial Court insofar as the change of user is concerned based on the oral evidence as well as the documentary evidence on record which as indicated above comprised of the rent receipts produced on behalf of the plaintiff, the municipal extract, and confirmed the decree passed by the Trial Court. However, in the light of the averments in the written statement refused the decree on the ground of disclaimer of title as was sought to be urged by the plaintiff.

6. It was the submission of the learned Counsel Mr. Prabhavalkar appearing for the applicant that the evidence on record has not been considered by the Court below in its proper perspective. It was the submission of Mr. Prabhavalkar that stray sentences in the evidence of the defendant have been wrongly construed by the Courts below as admissions. It was also the submission of Mr. Prabhavalkar that the plaintiff has not been able to substantiate his case that he was very much present in the year 1959 when negotiations took place between the parties before the said rooms were let out.

7. Per contra the learned Counsel for the respondent/ original plaintiff Shri Shah would support the orders passed by the

Courts below. It was the submission of the learned Counsel that on the plaintiff's own showing the suit premises are being used for the use of the servants working in the defendant's hotel and the storage of the goods, the ground of change of user has been made out. The learned Counsel drew the Court's attention to the evidence of the defendant wherein he has admitted that the suit premises were let out for residential purposes when they were so let out for the first time.

8. Having heard the learned Counsel for the parties, in my view it is not possible to accept the contentions of Mr. Prabhavalkar, the learned Counsel appearing for the applicant. Both the Courts below on the basis of material on record have concurrently recorded a finding of fact that there is change of user of the premises which were let out by the plaintiff to the defendant. Both the Courts below have accordingly passed concurrent decrees. This Court therefore does not deem it appropriate to exercise its revisionary jurisdiction. The Civil Revision Application is accordingly dismissed.

9. At this stage the learned Counsel Mr. Prabhavalkar appearing for the applicant seeks time to approach the Apex Court and prays that the ad interim relief be continued for some time. The ad interim relief, which is in operation since 28.02.2014, would

continue to operate till 15.05.2016 on the usual undertaking being filed by the applicant in this Court within two weeks from date. The applicant to abide by the order passed by the Appellate Court which was in operation pending the Appeal in the matter of payment of rent.

(R. M. SAVANT, J.)