

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 107 OF 2016

Sandeep Pai	...Applicant
<i>Versus</i>	
Rajan Nambiar and another	...Respondents

....
Mr. S.S. Redekar, Advocate for the Applicant.
Mr. R.D. Suryawanshi, Advocate, for the Respondents.
....

CORAM : R. G. KETKAR, J.

DATE : 7th June, 2016

P.C.

1. Heard Mr. S.S. Redekar, learned Counsel for the applicant and Mr. R.D. Suryawanshi, learned Counsel for the respondents, at length.

2. By this application under Section 115 of Code of Civil Procedure, 1908 (for short, 'CPC'), the applicant has challenged judgment and decree dated 3.5.2010 passed by learned Judge, presiding over Court room No.36, Small Causes Court at Mumbai (Bandra Branch) in R.A.D. Suit No.417/1997 as well as the judgment and decree dated 16.7.2013 passed by the Appellate Bench of Small Causes Court at Mumbai, Bandra

Branch in Appeal No.96 of 2010. By these orders, the Courts below dismissed the suit instituted by the applicant, hereinafter referred to as the plaintiff, and restrained defendant No.1 from dispossessing the plaintiff from the portion of the suit premises as per the order dated 27.3.2000 passed by this Court without following due process of law.

3. In support of this Civil Revision Application, Mr.Redekar submitted that the plaintiff has instituted the suit *inter alia* for direction against the defendant not to dispossess him from shop No.5, R.C. Dubey Chawl, Western Express Highway, Borivali (East), Mumbai – 400 066 (for short, 'suit premises') without following due process of law; for issuing direction to defendant No.2 to issue rent receipt in the name of the plaintiff at the address of the suit premises; for perpetual injunction restraining the defendants from unlawfully sub-letting, assigning, alienating and/or creating any third party interest and/or giving on leave and license basis or parting with possession of the suit premises without following due process of law. He submitted that the Courts below have committed serious error in holding that the plaintiff is a licensee and not a

tenant in respect of the suit premises. He has taken me through the impugned orders. He submitted that the application requires consideration.

4. On the other hand, Mr. Suryawanshi supported the impugned orders. He submitted that as per the order passed by the Appellate Court, the plaintiff has already instituted suit for recovery of possession of suit premises in 2010.

5. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. Perusal of the impugned orders and in particular Appellate Court's order shows that in 1991 the plaintiff was doing business in the suit premises on table space in small partition of the suit premises. It is evident that the plaintiff was inducted in the suit premises sometime in the year 1991. The Appellate Court considered whether the plaintiff has established exclusive possession and whether any interest in the suit premises is created in favour of the plaintiff. After considering the material on record, the Appellate Court held that the plaintiff is a licensee and not a tenant in respect of the suit premises. While dismissing the appeal, the Appellate Court

restrained defendant No.1 from dispossessing the plaintiff without following due process of law. As the Courts below have concurrently found that the plaintiff has failed to establish that he was a tenant and that he is a licensee, I do not find that any case is made out for invocation of powers under Section 115 of CPC. The plaintiff was not in a position to demonstrate that the findings recorded by the Courts below are perverse, being based upon no evidence or that they are contrary to the evidence on record. The plaintiff was also not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the Courts below. Hence, no case is made out for invocation of powers under Section 115 of CPC. Application fails and the same is dismissed with no order as to costs.

(R. G. KETKAR, J.)