

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

CIVIL REVISION APPLICATION NO. 333 OF 2014

Shankar Govind Kudalkar

..Applicant

Vs

1. Arvind Motiram Sawant and
Ors.

.. Respondents

Mr.Durgesh Kulkarni i/b S.W..Kulkarni, Advocate for Applicant.
Mr. J.V. Parmar, Advocate for Respondents.

CORAM : R.G.KETKAR,J.
DATE : 05/07/2016

PC:

1. Heard Mr. Durgesh Kulkarni, learned counsel for the applicant and Mr. J.V.Parmar, learned counsel for the respondents at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicant, hereinafter referred to as 'plaintiff', has challenged the Judgment and decree dated 26.7.2006 passed by the learned Judge presiding over Court Room No.2 of the Small Causes Court. Mumbai in R.A.D Suit No.2583 of 1997 as also the Judgment and decree dated 15.1.2014 passed by the Appellate Bench of the Court of Small Causes at Mumbai in Appeal No. 671 of 2006. By these orders, the Courts below dismissed the suit instituted by the plaintiff for

declaration of his tenancy rights in respect of shop no.7, situate on ground floor, Regina Building, bearing House no.144/50, Mattar Pakhadi Road, Cross Lane, Mazgaon, Mumbai 400010 (for short, 'suit premises').

3. In support of this Application, Mr. Kulkarni strenuously contended that the plaintiff is in possession of the suit premises since the year 1977. In view of the long standing possession of the plaintiff and the fact that the landlord did not contest the suit, the Courts below ought to have decreed the suit and declared the plaintiff as tenant of the suit premises. The Courts below, however, held that original tenant was Motiram Sawant. He died leaving behind his widow Ashalata Motiram Sawant and tenancy was transferred in the name of his wife Ashalata. Ashalata expired on 23.5.1997 and till date the tenancy receipts stood in the name of deceased Ashalata. The plaintiff did not come with the case that original tenant surrendered the tenancy and new tenancy was created in his favour. He, therefore, submitted that the Application requires consideration.

4. On the other hand, Mr. Parmar supported the impugned orders.

5. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. It is not in dispute that Motiram Sawant

was the original tenant of the suit premises. After his death, tenancy was transferred in the name of his wife Ashalata Sawant. The plaintiff came with the case that he is in possession of the suit premises from 1977 without any interruption. The Courts below have considered the evidence on record and in particular the fact that the plaintiff did not come with the case that original tenant had surrendered the tenancy to the landlord and thereafter new tenancy was created in his favour. The plaintiff did not approach the landlord for transferring the rent receipt in his name. The very conduct of the plaintiff indicated that the original tenant had sublet the suit premises to him in the year 1977 after commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1973. The subletting was in the teeth of Section 15 of the Bombay Rent Act. The Courts below also considered Section 14 as also documentary evidence on record and recorded a finding that Vilas Mahadik was owner of the liquor bar. The licence was in his name. The said Mahadik was conducting business of liquor bar in the suit premises and appointed the plaintiff as Manager to manage his business of liquor shop. The Courts below have taken into account the declaration dated 5.9.1997 which shows that said Vilas Mahadik had given the suit premises to the plaintiff to conduct the business of country liquor from 1977.

6. Thus, the Courts below after appreciating the evidence on record have concurrently held that original tenant had unlawfully sublet the suit premises to the plaintiff in the year 1977 and the same is not protected by the provisions of the Bombay Rent Act. Plaintiff was not in a position to demonstrate that the findings recorded by the Courts below are based on no evidence or that they are contrary to evidence on record. Plaintiff was also not in a position to demonstrate that no reasonable or prudent person would have reached the conclusions arrived at by the Courts below. For all these reasons, I do not find that the Courts below have committed any error in dismissing the suit. No case for invocation of powers under Section 115 of C.P.C is made out. Hence, Application fails and the same is dismissed.

(R.G.KETKAR, J.)