

Mr. Jayant V. Parmar for Applicant.
Mr. Abhishek Patil Respondent No.1.

P.C. :

2. By this Application under Section 115 of the Code of Civil Procedure (for short 'C.P.C.'), original defendant No.1 has challenged the judgment and decree dated 02.09.2003 passed by the learned Judge, presiding over Court Room No.26 of the Small Causes Court, Bombay in R.A.E. Suit No.172/645 of 1980 as also the judgment and decree dated 05.01.2015 passed by the Appellate Bench of the Small Causes Court in A-1 Appeal No.60 of 2004 . Respondent No.1, hereinafter referred to as plaintiff, has instituted Suit against the applicant and others for recovery of possession of 2nd floor of the building known as 'Jaydwar' situate at 19, Champa Galli, Mumbai 400 002 (for short 'suit premises') on the grounds that - 1) defendant No.1 have unlawfully sublet the suit premises or created licence; 2) defendant No.1 have changed the user of the suit premises i.e. they are using the suit premises for the purpose other than for which the suit premises were let out; 3) plaintiffs require the suit premises reasonably and bonafide for their personal living and occupation and that greater hardship will be caused

to the plaintiffs in case the eviction decree is refused; 4) defendant No.1 has made additions and alterations of permanent nature in the suit premises without their written permission; 5) defendant No.1 has committed an act of waste by causing damage to the suit premises.

3. The learned trial Judge decreed the Suit only on the ground that defendant No.1 has unlawfully sublet the suit premises. Aggrieved by that decision, defendant No.1 preferred Appeal. The plaintiffs preferred cross-objections. The Appellate Bench decreed the Suit on all the aforesaid grounds. It is against these decisions, defendant No.1 have filed the above application. The parties shall hereinafter be referred to as per their status in the trial Court.

4. Respondent No.1 – plaintiffs instituted Suit for recovery of possession of the suit premises inter alia on the grounds that defendant No.1 is unlawfully subletting the suit premises to defendants No.2 to 6. Defendants are guilty of waste of the suit premises. They have changed the user of the suit premises from business (Godown) to residential purpose in breach of the terms of tenancy and the provisions of law. Defendants have unlawfully put up structure of permanent nature in the suit premises and in the Suit instituted in the Bombay City Civil Court against the Mumbai Municipal Corporation, it has been held that the same is unauthorized. Plaintiffs require the suit premises reasonably and bonafide as they are carrying on business on the ground floor premises, which are insufficient for their requirement. Plaintiffs also desire to expand and start new business and for that, they require more space. Defendant No.1 has sustained huge financial losses and has closed down business 8 months prior to the Suit. In other words, the suit premises are not being used continuously for more than six months preceding the date of filing of the Suit.

5. Defendant No.1 resisted the Suit and denied all the adverse allegations. Defendant No.2 denied that defendant No.1 had unlawfully given, on leave and licence basis, possession of the suit premises to him. Defendant No.3 came out with the case that he was only a broker-cum-agent of the defendant No.1 and at no point of time, he claimed any interest in the suit premises or any part thereof. He ceased to work with defendant No.1 from 30.09.1980. He also adopted written statement of defendant No.1. Defendant No.1 filed additional written statement.

6. On the basis of the pleadings of the parties, the learned trial Judge framed the issues and parties adduced their evidence. The learned trial Judge decreed the Suit only on the ground of unlawful subletting and did not accept the other grounds raised by the plaintiffs. As against this, the Appellate Bench decreed the Suit on all grounds.

7. In support of this Application, Mr. Parmar strenuously contended that Courts below committed serious error in decreeing the Suit. As far as the ground of subletting is concerned, he submitted that the case of the defendants is that by way of some unlawful arrangement, some persons other than original defendants were put in possession. It does not amount to subletting. However, it is not possible to accept this submission. The Appellate Bench has considered the decision of the Apex Court in the case of ***Mohammedkasam Haji Gulambhai Vs. Bakerali Fatehali (D) by LRs***, AIR 1999 SC 3214. In paragraph 12-A, the Apex Court observed thus,

“12-A Clause (3) of Section 13(1) of the Act is couched in widest terms. There is absolute prohibition on the tenant from subletting, assigning or transferring in any other manner his interest in the tenanted premises. There appears to be no way around this subject of course if there is any contract to the contrary between the landlord and the tenant. In partnership where tenant is a partner, he retains legal possession of the premises as partnership is a compendium of names of all the

partners. In partnership the tenant does not divest himself of his right in the premises. On the question of subletting etc. law is now very explicit. There is prohibition in absolute terms on the tenant from subletting, assignment or disposition of his interest in the tenanted premises.”

8. In paragraph 13, the Apex Court observed thus,

“13. To restate in the present case facts do not show that Bakerali could exercise his power throughout the suit premises at his pleasure to the exclusion of his two sons who were running their business in partnership there and it cannot be said that he continued to exercise control over the suit premises.”

9. After considering this decision, the Appellate Bench noted that defendants, themselves, came out with the case that by way of some internal arrangement, some persons other than the original tenant were put in possession. In other words, defendant No.1 were not in control of the suit premises. Appellate Bench confirmed finding of the learned trial Judge against issue No.2. As far as the trial Court is concerned, in issue No.2, this ground is considered in paragraphs 19 to 30. After considering the evidence on record, the learned trial Judge categorically recorded a finding in paragraph 30 that the defendant No.1 failed to prove that they were carrying on the business in the suit premises on the date of the Suit through their partners Babulal and Pravinchandra. It was further recorded that the defendant No.1 firm are in habit of giving the suit premises to different persons or firms during the pendency of the Suit. Defendants failed to prove that the firms who are admittedly found in possession of the suit premises or any part thereof during the pendency of the Suit in fact belong to the heirs of those Babulal and Pravinchandra. Defendant No.1 failed to prove that now the widow of the said Babulal namely Kanchanben and three sons of Pravinchandra are the partners of the defendant No.1 firm and they are also carrying on business in the suit premises. The learned trial Judge, therefore, recorded a finding that the plaintiffs have proved defendant No.1 firm's

subletting to different firms at different point of time or inducting them as their licensee without prior permission of the plaintiffs-landlords.

10. As noted earlier, the learned trial Judge decreed the Suit only on the ground of unlawfully subletting. Defendant No.1 preferred substantive appeal and plaintiff preferred cross-objections. Appellate Bench considered the ground of change of user from paragraphs 30 to 36. After considering the evidence of P.W.1 and D.W.1, D.W.3 as also rent receipt exhibit-4, the Appellate Bench held that the suit premises were let out for business purpose and are used for residential purpose.

11. The Appellate Bench considered the ground of bonafide requirement and hardship from paragraphs 37 to 51. The Appellate Bench considered evidence of P.W.1, D.W.1 and D.W.3 and ultimately held in paragraph 51 that the plaintiffs require the suit premises reasonably and bonafide and that they will suffer great hardship in the event of refusal to pass eviction decree in their favour. The Appellate Bench thereafter considered the ground of additions and alterations as also acts of the defendant No.1 amounting to waste and damage to the suit premises from paragraphs 52 to 59. The Appellate Bench considered evidence of P.W.3, who is Architect by profession, and report prepared by him after inspection as also plan and photographs. The Appellate Bench also considered evidence of D.W.4 as also proceedings in City Civil Court, Bombay. After considering the evidence on record, the Appellate Bench held in paragraph 58 that defendant No.1 carried out additions and alterations of permanent nature in the suit premises without written permission of the plaintiffs. In paragraph 59, it is noted that the said additions and alterations were removed after the service of notice by the Corporation thereby they have caused waste and damage.

12. Thus, after considering the evidence on record, the Appellate Bench allowed the cross-objections as indicated earlier. Mr. Parmar was not in a position to demonstrate that the findings recorded by the trial Court and Appellate Bench are perverse being based upon no evidence or that they are contrary to evidence on record. After considering the material on record, I do not find that the Courts below committed any error in decreeing the Suit. Hence, no case is made out for invocation of powers under Section 115 of C.P.C. Application fails and the same is dismissed.

(R. G. KETKAR, J.)

Minal Parab