

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

CIVIL REVISION APPLICATION NO.788 OF 2014

Shri. Bharat Balwant Yadav

.. Applicant

Versus

Shri. Vithal Sadanand Mahajan

.. Respondent

Mr. A. B. Tajane, for the Applicant.

Mr. R. S. Kadam, for the Respondent.

CORAM : R.M. SAVANT, J.

DATE : 25th FEBRUARY 2016

PC.

1. The revisionary jurisdiction of this Court is invoked against the order dated 22.01.2014 passed by the Lower Appellate Court i.e. the Learned District Judge-20 and Assistant Sessions, Judge, Pune, by which, the Appeal filed by the Respondent herein being Civil Appeal No.434 of 2009 came to be allowed and resultantly, the judgment and decree passed by the Trial Court was set aside and in turn the suit of the Plaintiff came to be dismissed.

2. The Applicant herein is the landlord of the premises in question and the Respondent herein is the tenant. The suit premises are three rooms on the ground floor admeasuring 400 sq.ft. in the building

known as “River View Apartment” situated at Survey No.276, Plot No.11, Chinchwad, Taluka Haveli, District Pune. By the said suit, eviction of the Defendant was sought inter-alia on three grounds i.e. carrying out permanent alterations, nuisance and subletting of the premises. The suit proceeded to trial and on the basis of the material which came on record, the Trial Court rejected the two grounds on which eviction was sought, namely nuisance and subletting, however, decreed the suit in so far as the ground of permanent alterations is concerned. The Trial Court on the basis of the evidence on record and especially the cross-examination of the Plaintiff, came to a conclusion that the case of the Plaintiff of the Defendant carrying out permanent alterations has not been dented by the cross-examination of the Plaintiff by the Defendant.

3. The decree is question was carried in Appeal by way of Civil Appeal No.434 of 2009. The Lower Appellate Court on a re-appreciation of the material on record came to a conclusion that the Trial Court had erred in decreeing the suit on the ground that the Defendant carried out permanent alterations. The Lower Appellate Court held that the initial burden of proving the position of the premises at the time of creating tenancy as well as after raising the alleged permanent constructions was on the Plaintiff and it is only on the Plaintiff discharging the said initial burden that the burden shifts to the Defendant to show that the structure

is not of a permanent nature but only tenantable repairs are carried out. The Lower Appellate Court held that in the facts of the present case, wherein the plan of the ground floor premises as were existing at the time when the suit premises were let out having not been produced, it would not be proper to shift the burden to the Defendant to show that the construction raised does not amount to tenantable repairs but is a permanent construction. The Lower Appellate Court was of the view that the Trial Court has fallen into an error on the said aspect and had wrongly shifted the onus upon the Defendant when the Plaintiff had not discharged the initial burden cast upon him. The Lower Appellate Court was of the view that the Trial Court has got swayed by the short cross-examination of the Plaintiff by the Defendant and had got further swayed by the fact that specific suggestions about denial of his version as to raising the permanent construction was not put to the Plaintiff during his cross-examination and therefore, in turn held that the alleged permanent construction raised by the Defendant stands proved.

4. The Lower Appellate Court thereafter adverted to the evidence of the Defendant, wherein it has come on record that he is in occupation for the last 35 years and that initially it was a ground floor load bearing premises and that the Defendant constructed two upper floors in the year 1995-96 and in the process of constructing the two

upper floors, had badly damaged the suit premises on the ground of which tenantable repair were required to be carried out. It seems that on the basis of Exh.18, the Lower Appellate Court concluded that the nature of the construction of the ground floor is Kacha Packa construction made in bricks. The Lower Appellate Court further held that having regard to the sanctioned plan Exh.21, which was in respect of first and second floor premises, the same disclosed that the first and second floor premises are of RCC make. The Lower Appellate Court therefore concluded that on the construction having load bearing walls, the Defendant has put up two RCC floors and therefore concluded that in the year 1995-96 the suit premises was badly damaged for which the Defendant was required to carry out tenantable repairs. The Lower Appellate Court therefore deemed it appropriate to accept the case of the Defendant that on account of the construction carried out of the first and second floor, the premises were damaged as a consequence of which they were required to be repaired, the said case of the Defendant according to the Lower Appellate Court was probable. The Lower Appellate Court lastly concluded that the allegation of the Plaintiff was that the Defendant had put up a wash basin, constructed English type commode and changed the location of the kitchen platform from the northern side to the western side, the Lower Appellate Court held that the said constructions cannot be termed as

permanent construction causing structural damage to the premises, but at the most, the same can be said to be carried out for better enjoyment of the tenanted premises. In so far as the evidence of the Plaintiff is concerned, it is required to be noted that the Plaintiff had not produced any evidence to show the position of the suit premises at the time they were let out to the Defendant. It is also required to be noted that the Plaintiff in his evidence has categorically stated that the plan for the ground floor was handed over to the lawyer. However, for the reasons best known to the lawyer, the said plan was not placed on record. Hence, save and except the bare words of the Plaintiff, there was absolutely no material on record to buttress the case of the Plaintiff that the Defendant had carried out permanent alterations so as to attract the said ground for his eviction.

5. Per contra, the Defendant's case that on account of RCC pillars put up outside the structure of which one was in front of the door of the Defendant's structure, the need for change in the location of door had arisen as the said RCC was obstructing the door. In the absence of any material placed on record by the Defendant, the Lower Appellate Court has concluded that the case of the Defendant of the suit premises being damaged on account of the RCC construction of the Plaintiff appears to be more probable. In my view, the observation of the Lower Appellate Court

that installing a wash basin constructing, English commode and putting up a sink, cannot be said to be construction of a permanent nature so as to cause damage to the suit structure and rightly observed by the Lower Appellate Court can only be said to be done for the beneficial enjoyment of the suit premises. The Lower Appellate Court therefore has for cogent reasons upset the order passed by the Trial Court and has accordingly set aside the decree passed on the ground of permanent alterations. In my view, therefore, no case for exercise of the revisionary jurisdiction of this Court is made out. The Civil Revision Application is accordingly dismissed.

[R.M. SAVANT, J]