

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.681 OF 2014

Nish Developers Private Limited ... Applicant
Vs.
Vijay Kumar Vital Rao Sarvade and others ... Respondents

WITH
CIVIL REVISION APPLICATION NO.380 OF 2014

Vijay Kumar Vital Rao Sarvade ... Applicant
Vs.
Nish Developers Private Limited and others ... Respondents

Mr. Y. S. Jahagirdar, Senior Advocate a/w. Mr. S. G. Surana i/b. M/s.Bhandary & Bhandary for Applicant in C.R.A.No.681 of 2014 and for Respondent No.1 in C.R.A.No.380 of 2014

Mr. Kunal Bhanage a/w. Mr. Wasim Siddiqui for Applicant in C.R.A.No.380 of 2014 and for Respondent No.1 in C.R.A.No.681 of 2014.

CORAM : R. G. KETKAR, J.

DATE : JUNE 28, 2016

P.C. :

Heard Mr. Jahagirdar, learned Senior Counsel for applicant in C.R.A.No.681 of 2014 and for respondent No.1 in C.R.A.No.380 of 2014 and Mr. Bhanage, learned Counsel for applicant in C.R.A.No.380 of 2014 and for respondent No.1 in C.R.A.No.681 of 2014 at length.

2. Both these Applications are directed against the judgment and decree dated 13.02.2014 passed by the appellate Bench of the Small Causes Court at Mumbai in Appeal No.110 of 2009. By that order, the appellate Court allowed the appeal preferred by Vijaykumar Vithalrao Sarvade, respondent No.1 in C.R.A.No.681 of 2014 and applicant in C.R.A.No.380 of 2014, hereinafter referred to as 'plaintiff' and quashed and set aside the judgment and decree dated 11.12.2008 passed by the learned Judge presiding over Court Room No.2 of the Small Causes

Court at Mumbai in R.A.D.Suit No.2523 of 2006. The appellate Court decreed the Suit and declared that the plaintiff is the tenant in respect of the shop admeasuring 150 sq.ft. situate on the ground floor at New Islam Mill Compound, Mahadev Palav Road, Currey Road, Mumbai 400 012 (for short 'suit premises'). Applicant in C.R.A.No.681 of 2014 and respondent No.1 in C.R.A.No.380 of 2014, hereinafter referred to as defendant No.1 is directed to provide alternate accommodation i.e. commercial premises admeasuring 150 sq.ft. the plaintiff in the newly constructed building within a period of six months. Defendant No.1 was given liberty to provide alternate premises in buildings which are newly constructed or buildings under constructions on the land of the suit premises. Defendant No.1 was further permitted to seek extension of time for further period of six months, if due to unavoidable circumstances, they failed to provide alternate premises within six months.

3. In support of C.R.A.No.681 of 2014, Mr. Jahagirdar strenuously contended that the learned trial Judge dismissed the Suit instituted by the plaintiff for declaration of tenancy rights. As against this, while allowing the Appeal, the appellate Court in addition to declaring the status of the plaintiff as a tenant issued directions contained in clauses (b) and (d) of Clause 3 of the operative part of the order. The directions issued by the appellate Court are wholly without jurisdiction.

4. Mr. Jahagirdar submitted that plaintiff came with the case that Shri Nilkant Chaturbhuj Bhat @ Narendrabhai Bhatt, hereinafter referred to as defendant No.2 is the son and heir and legal representative of original tenant Deoshankar Bhat, since deceased. Plaintiff's father Vithalrao Sarvade, since deceased, was lawfully occupying the suit premises prior to 1945. Vithalrao Sarvade died on 12.11.1990.

Thereafter, the suit premises was in use, occupation and possession of his widow Parvati Vithalrao Sarvade (mother of the plaintiff). She died on 07.02.2006 leaving behind the plaintiff as her heir and the legal representative. As per the provisions of the Rent Act, plaintiff is a protected sub-tenant in respect of the suit premises. Plaintiff is in exclusive use, occupation and possession of the suit premises as a lawful sub-tenant. Plaintiff claims that he is in possession of the suit premises admeasuring 287 sq.ft. area and was paying monthly rent of Rs.60/-. Plaintiff also referred to Suit namely, R.A.E. & R. Suit No.1011/2063 of 1996 instituted by defendant No.2 against the plaintiff invoking the ground of bonafide and reasonable requirement among other grounds.

5. Mr. Jahagirdar submitted that by prayer clause (a), plaintiff sought declaration that he is a lawful / protected sub-tenant in respect of the suit premises i.e. shop No.1 admeasuring 287 sq.ft. As against this, the appellate Court held that plaintiff is a protected licensee as of 01.02.1973 as per Section 15-A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Bombay Rent Act'). He further submitted that the building where suit premises is situate was in a dilapidated condition. The said building is developed under DCR 33(7) and now 33(9). The occupant who is entitled to occupy the premises after redevelopment is to be decided by the Maharashtra Housing and Development Authority (MHADA). Plaintiff came with the case that Ganesh Vishnu Salvi, hereinafter referred to as defendant No.3, is unlawful occupant of the suit premises. He further submitted that the building collapsed in the year 2007. By that time, plaintiff did not get declaration of his tenancy rights. Open land cannot be subject to the tenancy rights of the plaintiff. He, therefore, submitted that the appellate Court was not justified in issuing declaration in favour of the plaintiff in terms of prayer clause (a) and the directions contained in

clauses 3(b) to (d) are without jurisdiction. He, therefore, submitted that the application requires consideration.

6. On the other hand, Mr. Bhanage supported the impugned order. He submitted that defendants No.2 and 3 have not challenged the impugned order. In other words, they have accepted the verdict. He invited my attention to paragraph 33 of the impugned order wherein the submissions advanced on behalf of the defendant No.1 that defendant No.2 surrendered tenancy by accepting compensation was recorded. It is in that context, the appellate Court considered Section 14 of the Bombay Rent Act and held that as defendant No.2 surrendered his tenancy rights, plaintiff has become tenant of the landlord. He also invited my attention to paragraphs 32 to 46 of the impugned order to contend that Corporation called upon the defendant No.1 to demolish the suit building after some portion of the building collapsed at midnight between 30.06.2007 and 01.07.2007. He, therefore, submitted that the Corporation issued notice under Section 354 and defendant No.1 thereafter demolished the entire building. The appellate Court was, therefore, justified in issuing directions contained in clauses 3(b) to (d) of the operative part of the impugned order.

7. As far as C.R.A.No.380 of 2014 is concerned, Mr. Bhanage submitted that the said application was preferred challenging only part of the impugned order to the extent of directing defendant No.1 to provide commercial premises admeasuring 150 sq.ft. instead of 287 sq.ft. claimed by the plaintiff. He states that plaintiff is not pressing that C.R.A.

8. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on

record. As noted earlier, plaintiff came with specific case that father of defendant No.2 was the tenant in the suit premises. Plaintiff's father was inducted in the suite premises some time in the year 1945, and therefore, he is a protected sub-tenant. Perusal of paragraph 29 of the impugned order shows that the appellate Court referred to paragraph 4 of the plaint in R.A.E.&R.Suit No.1011/2063 of 1996 instituted by defendant No.2. Paragraph 4 of the plaint reads thus,

“The plaintiff states that the deceased Vithalrao Khandu Sarvade the late husband in or about in the year 1963 requested the plaintiff to allow him to carry on the business of Tailoring and Washing Clothes in the suit premises and the plaintiff granted the permission to him on or about 24.01.1963 under the Agreement of Leave and Licence and since then Vithalrao Khandu Sarvade was in exclusive use, occupation and possession as a Licensee from that date and on account of the amendment of the Bombay Rent Act which came into force in 1st day of February, 1973 and the defendant's husband being in possession on 1st day of February, 1973, the Leave and Licence being in subsisting on that date and the defendant No.1 being the widow and being a heir and legal representative of the deceased, the plaintiff is advised to treat the defendant No.1 as a tenant, therefore, the defendant No.1 is deemed tenant recognized to be a tenant of the plaintiff in respect of the suit premises.”

9. In paragraph 30, the appellate Court referred to the licence issued by the Corporation on 24.01.1963 (exhibit-41) in favour of the plaintiff's father. The said licence was renewed from time to time till the year 2007. Perusal of paragraph 4 of the plaint in R.A.E.&R.Suit No.1011/2063 of 1996, extracted hereinabove, coupled with the licence dated 24.01.1963 (exhibit-41) issued by the Corporation and which was renewed from time to time till the year 2007, I do not find that the appellate Court committed any error in declaring plaintiff as a lawful occupant in the suit premises. It is no doubt true that the appellate Court proceeded to consider applicability of Section 15-A of the Bombay Rent Act. In my opinion, once the appellate Court recorded a finding that plaintiff's father was in exclusive possession of the suit premises prior to 01.02.1973 and further having due regard to the fact that the father of

defendant No.2 was the tenant, in view of amendment of 1987 to the Bombay Rent Act, the status of the plaintiff's father was that of a lawful sub-tenant. Understood thus, I do not find that the appellate Court committed any error in that regard. In fact, by prayer clause (a), plaintiff also sought declaration that he is a lawful / protected sub-tenant. Considering the assertions made in the plaint, referred hereinabove as well, in my opinion, plaintiff is a lawful sub-tenant.

10. Section 7(15) defines the expression “tenant”. Section 7(15)(a) reads thus,

“7. Definitions.- In this Act, unless there is anything repugnant to the subject or context,-

(15) “tenant” means any person by whom or on whose account rent is payable for any premises and includes,-

(a) such person,-

(i) who is a tenant, or

(ii) who is a deemed tenant, or

(iii) who is sub-tenant as permitted under a contract or by the permission or consent of the landlord, or

(iv) who has derived title under a tenant, or

(v) to whom interest in premises has been assigned or transferred as permitted,

by virtue of, or under the provisions of, any of the repealed Acts;”

11. It is not disputed that defendants No.2 and 3 have not challenged the impugned order by filing separate proceedings. Perusal of paragraph 3 of the impugned order shows that on behalf of the defendant No.1, submission was advanced about surrender of tenancy rights by defendant No.2 by accepting compensation. In view thereof, the appellate Court was right in holding that as the defendant No.2 - tenant had surrendered his tenancy rights, plaintiff has deemed to become tenant of the landlord on the same terms and conditions as he would have held from the tenant if the tenancy had continued.

12. Mr. Jahagirdar submitted that the appellate Court was not justified

in issuing directions contained in clauses 3(b) to (d) thereof. I do not find any merit in this submission as well. Perusal of paragraph 41 onwards shows that the appellate Court has exhaustively dealt with this aspect. In paragraph 46, the appellate Court has considered the correspondence on record as also the fact that as defendant No.1 did not carry out repairs, the part of the suit building collapsed at midnight between 30.06.2007 and 01.07.2007. Corporation issued notice dated 02.07.2007 at exhibit-52 directing defendant No.1 to remove the dangerous portion of the building. This was followed by notice under Section 354 dated 23.07.2007 (exhibit-54) directing the defendant No.1 to pull down the entire suit building. In response to this notice under Section 354, defendant No.1 demolished the entire building. The appellate Court considered the decision of the Apex Court in ***T. Lakshmipathi Vs. P. Nithyananda Reddy*, (2003) 5 SCC 150** as also ***Vannattankandy Ibrayi Vs. Kunhabdulla Hajee*, (2001) 1 SCC 564**. The said decisions are subsequently considered by the Larger Bench of the Supreme Court in the case of ***Manju Sarkar Vs. Mabish Miah*, (2014) 14 SCC 21**. The Apex Court has in terms approved the decision in ***Lakshmipathi*** (*supra*) and has held that the tenancy rights are not extinguished. Independent of these decisions, from the evidence on record, it is clear that plaintiff is a lawful subtenant. In view thereof, I do not find that the appellate Court committed any error in issuing directions contained in clauses 3(b) to (d) of the operative part of the order once it is held that the plaintiff is a lawful subtenant. Defendant No.1 was not in a position to demonstrate that the findings recorded by the appellate Court are perverse being based on no evidence or that they are contrary to the evidence on record. Defendant No.1 was also not in a position to demonstrate that reasonable or prudent person would have reached the conclusions arrived at by the appellate Court. Hence, no case is made out for invocation of powers under Section 115 of C.P.C.

Civil Revision Application No.681 of 2014 fails and the same is dismissed.

13. Civil Revision Application No.380 of 2014 is disposed of as not pressed. Order accordingly.

(R. G. KETKAR, J.)

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