

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 572 OF 2015

Shaligram Jagannath Jaiswal	...Applicant
<i>Versus</i>	
Babulal Nihalchan Jain	...Respondent

....
Mr.Sham V. Walve, Advocate for the Applicant.
Ms. Neha Bhide, Advocate for the Respondent.
....

CORAM : R. G. KETKAR, J.

DATE : 15th June, 2016

P.C.

1. Heard Mr.Sham Walve, learned Counsel for the applicant and Ms.Neha Bhide, learned Counsel for the respondent, at length.

2. By this application under Section 115 of Code of Civil Procedure, 1908 (for short, 'C.P.C.', the applicant, hereinafter referred to as 'plaintiff', has challenged the judgment and decree dated 27.2.2015 passed by Appellate Bench of the Court of Small Causes at Bombay in P. Appeal No.220/2008. By that order, the Appellate Court allowed the appeal preferred by the respondent, hereinafter referred to as 'defendant', and quashed and set aside

the judgment and decree dated 18.2.2008 passed by the learned Judge, presiding over court room No.11 of the Court of Small Causes Court at Bombay in L.E. & C. Suit No.124/148 of 1992 and dismissed the suit instituted by the plaintiff.

3. The plaintiff instituted the suit against the defendant *inter alia* contending that he is a licensee in respect of shop No.3/(3A) on the ground floor of “Poornima Shopping Centre”, formerly known as “Jhaverbhai Chawl” admeasuring about 235 sq. ft. and consisting of two rooms, out of which one room admeasures 144 sq. ft. which is in front facing Mahatma Gandhi Road (Old Crown Road) and the other room admeasures about 189 ft. and that he has revoked the licence. The plaintiff, therefore, instituted the suit under Section 41 of the Presidency Small Cause Courts Act, 1882 seeking direction against the defendant to hand over possession. The defendant resisted the suit *inter alia* claiming that he is a tenant in respect of the suit premises and is not a licensee.

4. The learned trial Judge framed necessary issues. After considering the evidence on record, the learned trial Judge decreed the suit. Aggrieved by this decision, the defendant

preferred appeal and the appellate Court allowed the appeal. It is against this decision, the original plaintiff has instituted this C.R.A..

5. In support of this application, Mr. Walve strenuously contended that the learned trial Judge while decreeing the suit considered the fact that the defendant had instituted R.A.D. Suit No.393/1996 and R.A.N. Suit No.26/SR of 1996. Both these proceedings were dismissed for default. The learned trial Judge considered the examination-in-chief of the defendant wherein he stated that he has been paying the rent to Tulshiram, brother of the present plaintiff from April, 1996 and the rent receipts are issued by Tulshiram in his favour. The learned trial Judge also considered the Interim Notice No.184/2006 taken out by the defendant on 11.7.2006 for amending the written statement. The learned trial Judge observed that the defendant admitted that the plaintiff has issued legal notice dated 23.6.1992 vide Exhibit-B wherein the plaintiff asserted that the defendant was a licensee of the suit premises and that he has not paid compensation and electricity charges. The learned trial Judge, therefore, concluded that

defendant has utterly failed to prove that he is a sub-tenant and moreover he has also denied the title of the plaintiff and the plaintiff has duly proved that he himself has given the suit premises to the defendant on leave and license basis and the plaintiff has revoked his licence by legal notice dated 23.6.1992. As against this, the appellate Court interfered with well reasoned order of the trial Court. He therefore submitted that application requires consideration.

6. On the other hand, Ms. Bhide supported the impugned order. She invited my attention to paragraph-20 of the impugned order.

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

8. I do not find any merit in the submissions advanced by Mr. Walve. Perusal of the impugned order shows that the appellate Court has considered the admissions given by the plaintiff during the course of cross-examination and in particular in paragraph-20, the Appellate Court has reproduced

those admissions serially. PW-1 Saligram admitted that the defendant has been in exclusive possession of the suit premises from 1.5.1979. The defendant is paying rent to the plaintiff and that the suit premises is under the exclusive control of the defendant. The defendant has obtained all necessary licence, permissions from the local authorities for running his business. The defendant himself locks his shop even since his inception in the suit premises. In other words, the defendant is in control of the suit premises. The plaintiff also unequivocally admitted that had the defendant continued paying rent of the suit premises, he would not have instituted the suit. PW-1 further admitted that his family was being maintained on the rent paid by the defendant. After considering the evidence on record, the Appellate Court ultimately held that the defendant is a tenant and not a licensee.

9. After considering the evidence on record, I do not find that the Appellate Court has committed any error in allowing the appeal and in dismissing the suit. The plaintiff 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 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 Appellate Court. Hence no case for invocation of powers under Section 115 of C.P.C. is made out. Civil Revision Application fails and the same is dismissed.

(R. G. KETKAR, J.)

Deshmane (PS)