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

CIVIL REVN. APPLICATION NO. 315 OF 2016

Mr. Shasikant Chunilal Sindhi (Marwadi). ... Applicant.

V/s.

Mr. Shaikh Mohamad Isak Karjekar & Ors. ... Respondents.

Mr. Dipesh Siroya for the Applicant.

Mr. J.A. Udaipuri i/b. Udaipuri & Co. for Respondents 1 to 3.

CORAM : N.M. Jamdar, J.

28 November, 2016.

Oral Order :-

By this application the Applicant challenges the order passed by the learned District Judge, Alibag dated 18 December 2015 dismissing the Appeal filed by the Applicant – tenant and allowing the Appeal filed by the Respondents – landlord.

2. The Suit No. 43 of 2002 was instituted by the Respondents – landlord to recover the possession of the suit property from the Applicant on the ground that the Applicant has breached provisions of Section 16 of the Maharashtra Rent Control Act, 1999.

3. According to the Respondents, the property was rented out to the father of the Applicant in which the Applicant was using the front portion for commercial purposes and rear portion for residential purpose. It is the contention that the Applicant has now purchased a residential flat and shifted his residence to the newly acquired premises and without seeking permission of the Respondents – landlord has converted the rear portion as shop premises and therefore, having committed breach of the provisions of the Act, the Applicant is liable to be evicted. The Applicant filed written statement and contended that there was no specific agreement between the parties that it was let out for a particular use. It was contended that the Applicant has continued the user as it was being used by the grandfather and even though the Applicant has shifted in the residential flat, there is no change of user of the premises. Parties led evidence at trial. The learned Civil Judge by the judgment and decree dated 18 December 2009 partly decreed the suit and directed the Applicant to hand over the rear portion of the suit premises to the Respondents – landlord. The Applicant filed a Civil Appeal No. 13 of 2010 challenging the judgment and decree passed by the Civil Judge and the Respondents – landlord filed an Appeal bearing No. 12 of 2010. The learned District Judge heard the Appeals together and by the impugned judgment and order dated 18 December 2015, directed the Applicant to hand over the possession of the entire premises.

4. Heard the learned Counsel for the parties. The learned Counsel for the Applicant contended that there was no agreement between the parties as regard the nature of the use the premises were to be put to and since there was no agreement, there is no question of any change of user. He submitted that in any case, factually there is no change and the position when the premises were let out, continued. The learned Counsel for the Applicant submitted that the learned District Judge was in error in holding that the premises were integrated contract of tenancy without giving an opportunity to the Applicant as such issue was never framed by the learned Civil Judge. He submitted that therefore without giving such an opportunity, the Appeal could not have been allowed. The learned Counsel for the Applicant relied upon the decisions of the Apex Court in the case of *M/s. S.F. Engineer v/s. Metal Box India Ltd. & Anr. (Civil Appeal No.4189 of 2014)* in respect of his contention regarding the nature of the tenancy and the burden of proof. The learned Counsel also relied upon the decision of the Apex Court in the case of *Union of India v/s. Ibrahim Uddin & Anr. (Civil Appeal No. 1374 of 2008)*. The learned Counsel for the Respondent submitted that the learned District Judge rightly relied upon the decision of the Apex Court in the case of *Nilesh Nandkumar Shah v/s. Sikandar Aziz Patel* reported in *AIR 2002 SCC 3073* and there are adequate pleadings as regard the nature of the tenancy already on record and therefore, there is no prejudice caused to the Applicant.

5. That the Applicant has acquired a residential flat is not in dispute. A finding of fact has been recorded by both the Court that the entire premises are now used for commercial purpose. It is the contention of the learned Counsel for the Applicant that since there is no agreement, the purpose for which the premises was let out, cannot be separated in different compartments and there is no specification as to how the premises were to be used. It is an admitted position that there is no written agreement between the parties. However, both the Courts have taken note of the conduct of the parties and also the nature of the premises. It is the case of the Applicant himself that the premises have been continuously used wherein the front portion is used for commercial purpose and the rear portion is used for residential purpose. Finding of fact has been recorded that the kitchen platform has been created at the rear end of the premises which clearly indicates that the residential user of the premises. Though the demarcation has not been specified by the parties in a written format, both the Courts were not in error in holding that there was implied agreement between the parties which demarcated the premises into commercial and residential use. Therefore, once the premises were used for a long duration in a particular manner and they were accordingly modified to suit a particular use, unless contrary written document is shown, the view taken by the District Court in inferring a demarcating agreement, cannot be stated to be perverse. Therefore, the contention of the

learned Counsel for the Applicant that the case would fall in clause (a) has culled out by the Apex Court in the case of *Nilesh Nandkumar Shah*, cannot be accepted. Contentions of the learned Counsel for the Applicant is that there is no rear entrance for residential portion. Firstly this is a factual position and secondly if the premises are let out to one tenant, there may not be a separate entrance for the residential premises. Question is whether the parties fully understood and demarcated the user. The learned District Judge was right in holding that the portion was demarcated.

6. Turning now to the grievance made by the learned Counsel for the Applicant that the issue regarding the nature of tenancy was not framed by the trial court and it has been so decided by the Appellate Court without giving an opportunity. The grievance is totally unjustified. In the plaint a clear assertion is made specifying that the demarcation and the manner in which the premises were put to use. Therefore, the learned Counsel for the Respondent is right in contending that there may not be a specific phrase of integrated contract of tenancy, used in the plaint, the case of the Respondents – landlord, going by the pleadings, was clearly of the integrated contract of tenancy. Both the parties went to trial with the said case of landlord and led their evidence. Based on this evidence that the learned District Judge came to the conclusion that the premises were let out with an integrated contract of tenancy.

7. In the circumstances, the act of the Applicant in simply shifting the entire commercial use to the rear portion without the permission of the landlord has led to the breach of Section 16 of the Act of 1999 and both the Courts were not in error in upholding the case of the Respondents – landlord and dismissing the Appeal of the Applicant. No error of jurisdiction arises nor there is any perversity in the findings of both the Courts. The Revision Application is accordingly dismissed.

8. The learned Counsel for the Applicant seeks continuation of the ad-interim order. The learned Counsel for the Respondents opposes. In the facts and circumstances of the case, I am inclined to continue the ad-interim order for six weeks. However, it will take some time to get the copy of the order, the ad-interim order is continued for period of eight weeks from today.

(N.M. Jamdar, J.)