

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 692 OF 2014**

Union of Bank of India

..Applicants

Vs

M/s. Pal Properties & Hotel
Private Ltd.

.. Respondents

Mr. Prakash Shinde i/b MDP & Partners, Advocates for Applicants.

Mr. P.K.Dhakephalkar, Senior Advocate i/b Mr. Jaydeep Deo. Advocate for Respondents.

CORAM : R.G.KETKAR,J.
DATE : 20/06/2016

PC:

1. Heard Mr. Prakash Shinde, learned counsel for the applicants and Mr. P.K.Dhakephalkar, learned senior counsel for the respondents at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908, (for short, 'C.P.C.'), the applicants, hereinafter referred to as 'defendants', have challenged the Judgment and decree dated 11.12.2008 passed by the learned Judge, presiding over Court Room No. 19, of the Court of Small Causes at Bombay in T.E.Suit No.74/89 of 2005 as also the Judgment and decree dated 3.4.2014 passed by the Appellate Bench of the Court of Small Causes at Mumbai in Appeal No.92 of 2009. By these orders, the Courts below decreed the suit instituted by the

respondents, hereinafter referred to as 'plaintiffs', and directed the defendants to hand over vacant and peaceful possession of Ground floor admeasuring 2300 sq.ft. or thereabout, of the building known as 'Pals Hotel Building' Kalachowki, near Cotton Green Railway Station, Mumbai 400 033 to the plaintiffs within three months from the date of the order.

3. In support of this application, the only contention advanced on behalf of the defendants is that notice dated 14.2.2005 at Exh.17 issued under section 106 of the Transfer of property Act, 1882, was a defective notice. Mr. Shinde submitted that on 21.9.1995, Agreement of Lease (Exh.29) was entered into between the parties. The duration of the lease was 10 years. It is an unregistered instrument. By notice dated 14.2.2005, the plaintiffs terminated the monthly tenancy of the defendants. He submitted that on the date of issuance of termination notice dated 14.2.2005, Mr. Deepak Motiani, Director of the plaintiffs, was not authorized by the plaintiffs' company by passing resolution or executing power of attorney in his favour. The termination notice is, therefore, not valid and legal.

4. The plaintiffs' company vide Resolution dated 4.3.2005 Exh.16, authorised Mr. Deepak Motiani to institute suit, sign and verify and give evidence in proposed suit and proceedings. Suit was instituted on 25.4.2005 authorising Mr. Motiani. However, no

resolution authorizing Mr. Motiani to issue notice of termination was passed.

5. Mr. Shinde invited my attention to paragraph 28 of the trial Court's Judgment and contended that Mr. Deepak Motiani, one of the Directors of the plaintiffs, gave instructions to Advocate to issue notice dated 14.2.2005. As Mr. Motiani was not authorized to issue termination notice, the Courts below were not justified in passing the decree.

6. On the other hand, Mr. Dhakephalkar supported the impugned orders. He submitted that the defendants are exempted from applicability of the Rent Act in view of Section 3(1)(d) of the Maharashtra rent Control act, 1999 (for short, 'Act'). The parties are, therefore governed by the provisions of the Transfer of Property Act, 1882. He submitted that the notice was validly issued on behalf of the plaintiffs' company.

7. I have considered the rival consideration advanced by the learned counsel appearing for the parties. I have also perused the material on record. Perusal of the notice dated 14.2.2005 shows that on behalf of the plaintiffs, Divyakant Mehta and Associates have issued the notice. The notice is issued under the instructions from and on behalf of the plaintiffs. In other words, the notice was issued for and on behalf of the plaintiffs-company. Mr. Shide submitted that Mr. Motiani gave instructions to

Advocates for issuing the notice and he was not authorized. I do not find any merit in this submission. The plaintiffs being a juristic person has to act through its Directors. It is not disputed that Mr. Deepak Motiani was one of the Directors of the plaintiffs' company. In view thereof as also having regard to the fact that under section 3(1)(b) of the Act, provisions of the Act are not applicable to the defendants, I do not find that the Courts below committed any error in decreeing the suit. No other contention was advanced. Hence, Application fails and the same is dismissed. Order accordingly.

(R.G.KETKAR, J.)