

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.199 OF 2016

Dinkarrao Shankarao Gole ... Applicant
Vs.
Kamalakar Mahadeo Gite and others ... Respondents

Mr. Nikhil Wadikar i/b. Mr. Nandu Pawar for Applicant.
Mr. V. S. Talkute for Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : JUNE 15, 2016

P.C. :

Heard Mr. Wadikar, learned Counsel for applicant and
Mr. Talkute, learned Counsel for respondent No.1 at length.

2. By this application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicant, hereinafter referred to as defendant No.2, has challenged the judgment and decree dated 21.01.2010 passed by the learned 4th Civil Judge, Junior Division, Satara in Regular Civil Suit No.412 of 2000 as also the judgment and decree dated 18.03.2015 passed by the learned Principal District Judge, Satara in Regular Civil Appeal No.41 of 2010. By these orders, the Courts below decreed the Suit instituted by the respondent No1, hereinafter referred to as plaintiff, on the ground of unlawful subletting by defendant No.1 in favour of defendant No.2 i.e. under Section 16(1)(e) of the Maharashtra Rent Control Act, 1999 (for short 'Act'). Plaintiff instituted Suit against respondent No.2 - Bhimrao Pandurang Ghadge (since deceased), hereinafter referred to as original defendant No.1 and the applicant / defendant No.2 invoking various grounds under the Act. It is the case of the plaintiff that he had let out Gala admeasuring 15' x 9' in City Survey No.57/2, Ravivar Peth, Satara in building known as 'Gite

Building' (for short 'suit premises') to Shri Trimurti Steel Furniture, Proprietor Bhimrao Pandurang Ghadge. Suit premises consists of two rooms admeasuring 300 sq.ft. Plaintiff contended that the monthly rent was Rs.300/-. Agreement was entered into between the plaintiff and Shri Trimurti Steel Furniture in 1981. One of the conditions was that defendant No.1 was not to sublet the suit premises. Plaintiff contended that by committing breach of the tenancy conditions, defendant No.1 has unlawfully sublet the suit premises to the defendant No.2. Defendant No.2 is presently occupying the suit premises unauthorizedly and illegally.

3. Defendant No.2 resisted the Suit inter alia contending that the suit premises was let out to the partnership firm by name, Trimurti Steel Furniture. He is one of the partners along with the defendant No.1 and two others. He, therefore, denied that he is unlawful sub-tenant of the suit premises. Defendant No.2 further contended that from time to time, plaintiff had accepted rent directly from him. As the plaintiff accepted the rent directly from him, he accepted relationship of landlord and tenant between the plaintiff and defendant No.2. Plaintiff, therefore, cannot invoke ground of unlawful subletting under Section 13(1)(e) of the Act. On the basis of pleadings of the parties, the learned trial Judge framed the necessary issues. Parties led the evidence. After considering the evidence on record, the learned trial Judge decreed the Suit under Section 16(1)(e) of the Act. Aggrieved by that decision, defendant No.2 preferred Appeal, which was dismissed by the learned Principal District Judge. It is against these decisions, defendant No.2 has instituted the present Application.

4. In support of this Application, Mr. Wadikar reiterated the submissions advanced before the Courts below. He submitted that

defendant No.1, defendant No.2 and S/Sh. Bhimrao Pandurang Ghadge and Suresh Anandrao Ghadge were the partners of Trimurti Steel Furniture. As the defendant No.2 was one of the partners and the suit premises was let out to the partnership firm, it cannot be said that defendant No.1 had unlawfully sublet the suit premises to the defendant No.2.

5. Alternatively, Mr. Wadikar submitted that in any case, there is relationship of landlord and tenant between the plaintiff and defendant No.2. He invited my attention to paragraph 3 of the plaint as also paragraph 4 of the written statement. He has also invited my attention to the extract of Savings Bank A/c. No.4472 maintained by Bank of Maharashtra, Ravivar Peth Branch, Satara standing in the name of the defendant No.2. Right from 1988 onwards, defendant No.2 had paid rent by way of cheques to the plaintiff. He also invited my attention to examination-in-chief of the defendant No.2, and in particular, paragraphs 4, 5 and 6. In short, he submitted that perusal of the extract of S.B.A/c. No.4472 shows that defendant No.2 was paying rent right from the year 1988. Defendant No.2 was paying the rent for more than 12 years to the plaintiff and plaintiff went on accepting the rent from the defendant No.2. He submitted that even defendant No.2 had issued cheques from Current Account No.701 of Trimurti Steel Furniture in favour of the plaintiff. He submitted that as plaintiff accepted the rent directly from defendant No.2 in his individual capacity, the relationship of landlord and tenant between the plaintiff and defendant No.2 is established. However, the Courts below have not considered this aspect at all.

6. On the other hand, Mr. Talkute supported the impugned orders. He submitted that after appreciating the evidence on record, the Courts

below have concurrently held that defendant No.2 was not one of the partners of Trimurti Steel Furniture and that all the rent receipts issued by the plaintiff were in the name of Trimurti Steel Furniture. Plaintiff did not issue a single rent receipt in favour of the defendant No.2. He submitted that in paragraph 5 of the affidavit of examination-in-chief, defendant No.2 deposed that he had issued various cheques of Current Account No.701 of Trimurti Steel Furniture to the plaintiff. He submitted that contention of the defendant No.2 that as the plaintiff accepted rent from him through cheques issued from his individual A/c. No.4472, defendant No.2 became tenant of the plaintiff, is wholly misconceived. He, therefore, submitted that no case is made out for invocation of powers under Section 115 of the C.P.C.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Plaintiff came with a specific case that written agreement of tenancy was executed between the plaintiff and Shri Trimurti Steel Furniture. Tenancy agreement dated 04.12.1981 at exhibit-52 shows that it was entered into between the plaintiff and Shri Trimurti Steel Furniture through its Proprietors Bhimrao Pandurang Ghadge and Suresh Anandrao Ghadge. It is, however, material to note that the said agreement is signed by the plaintiff and Bhimrao Pandurang Ghadge. In other words, it is not signed by Suresh Anandrao Ghadge. Thus, perusal of this agreement shows that agreement was between the plaintiff and Shri Trimurti Steel Furniture, Proprietor Bhimrao Pandurang Ghadge.

8. The Courts below, after appreciating the evidence on record, have concurrently held that the defendant No.2 was not one of the partners of Trimurti Steel Furniture. In particular, the appellate Court has drawn adverse inference against the defendant No.2 on the ground that plaintiff

issued notice to the defendant No.2 under Order 12, Rule 8 of C.P.C. at exhibit-94 calling upon him to produce document showing that both the defendants and Suresh Ghadge were partners of Trimurti Steel Furniture. Despite receipt of that notice, defendant No.2 did not produce any document to substantiate his contention that he was one of the partners of Trimurti Steel Furniture. The learned Principal District Judge observed that had it been the case that both the defendants and Suresh Ghadge were partners of the firm, as deposed by the defendant No.2 and that there was document in that regard, he would have certainly produced the said document. Since defendant No.2 did not produce such document, an adverse inference can be drawn against him that he was not partner of Trimurti Steel Furniture when agreement was executed on 04.12.1981. I do not find that the learned Principal District Judge committed any error in holding that defendant No.2 was neither partner nor proprietor of Trimurti Steel Furniture.

9. This brings me to consider the next submission advanced by Mr. Wadikar that defendant No.2 was tenant in his individual capacity as for more than 12 years, plaintiff was accepting rent directly from the defendant No.2. Mr. Wadikar submitted that the Courts below have not considered this aspect at all. It is not possible to accept this submission for more than one reason. In the first place, the learned trial Judge has considered this aspect in paragraph 25. The learned trial Judge considered the counterfoils of cheque book at exhibits- 103, 104 and 106 and observed that defendant No.2 did not demolish the case of the plaintiff that defendant No.2 was issuing cheque on behalf of Ghadge. The learned trial Judge further observed that defendant No.1 committed breach of conditions of tenancy.

10. As far as appellate Court is concerned, the learned Principal

District Judge has considered this aspect from paragraph 25 onwards. The learned Principal District Judge observed that all the rent receipts are issued in the name of Trimurti Steel Furniture. In paragraph 26, the learned Principal District Judge observed that on the basis of counterfoils, which are on record, it can be said that the rent of Trimurti Steel Furniture was paid to the plaintiff from the account of defendant No.2 in Bank of Maharashtra. Thus, all these counterfoils are in respect of payment of rent of Trimurti Steel Furniture. In paragraph 28, the learned Principal District Judge observed that perusal of counterfoils - exhibits 103 to 105 shows that they were issued in favour of the plaintiff towards rent of Trimurti Steel Furniture from time to time. These counterfoils do not show that the cheques were issued by the defendant No.2 as a tenant in the suit premises and it appears that cheques were issued in the name of plaintiff either towards rent of Trimurti Steel Furniture or show room. The learned Principal District Judge observed that defendant No.2 failed to prove that he is one of the partners of Trimurti Steel Furniture and the suggestion on behalf of the plaintiff to the defendant No.2 that he paid rent to the plaintiff as Manager of Trimurti Steel Furniture of the defendant No.1 and the possibility of paying rent by defendant No.2 to the plaintiff directly, instead of paying rent to the defendant No.1, on the instructions of defendant No.1, cannot be ruled out. The learned Principal District Judge, therefore, categorically recorded a finding that these counterfoils of the the cheques are not sufficient to hold that by accepting the rent as per the cheques of these counterfoils from the defendant No.2, the plaintiff has accepted his relationship with the defendant No.2 as landlord and tenant.

11. In paragraph 5 of the affidavit of examination-in-chief of defendant No.2, he deposed that he had issued various cheques to the plaintiff from Current A/c. No.701 of Trimurti Steel Furniture towards

rent of the suit premises. Thus, defendant No.2 had signed those cheques for and on behalf of Trimurti Steel Furniture. It is in that context, if the plaintiff accepted cheques issued by defendant No.2 from Savings A/c. No.4472 maintained by Bank of Maharashtra towards payment of rent of suit premises then that will lead to an inference that plaintiff accepted defendant No.2 as his tenant. At the cost of repetition, not a single rent receipt was issued by the plaintiff in favour of the defendant No.2. Apart from that, during the course of arguments, I repeatedly called upon Mr. Wadikar as to when the defendant No.2 claims to be paying rent to the plaintiff directly for more than 12 years, why he did not insist for issuing rent receipt in his individual name. Mr. Wadikar was not in a position to give any reply to this query. If at all, defendant No.2 claims to be individual tenant of plaintiff and that he was paying rent directly to the plaintiff, nothing prevented defendant No.2 from insisting upon plaintiff to issue rent receipts in his name. In view thereof, the contention advanced by the defendant No.2 that by accepting rent directly from the defendant No.2, relationship of plaintiff and defendant No.2 as landlord and tenant is established cannot be accepted.

12. The Courts below, after considering the material on record, have concurrently held that defendant No.2 is not one of the partners of Trimurti Steel Furniture. The Courts below also held that defendant No.2 was not individual tenant and there is no relationship of landlord and tenant between the plaintiff and defendant No.2. Defendant No.2 was not in a position to show that the findings recorded by the Courts below are perverse being based on no evidence on record and are contrary to the material on record. Defendant No.2 was also not in a position to demonstrate that no reasonable / prudent person would have reached the conclusions arrived at by the Courts below. Hence, no case

is made out for invocation of powers under Section 115 of C.P.C.
Application fails and the same is dismissed.

(R. G. KETKAR, J.)

Minal Parab