

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 347 OF 2015

Mrs. Sujata Suresh Parkar ...Applicant

Versus

Behram Aspandiar Irani

And Ors

...Respondents

....

Mr.Khan Javed Akhtar, Advocate for the Applicant.

Mr.P.S. Dani, Senior Advocate i/b. Ms. Swati H. Sagvekar,
Advocate for Respondents.

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CORAM : R. G. KETKAR, J.

DATE : 14th June, 2016

P.C. :

1. Heard Mr.Khan Javed Akhtar, learned Counsel for the applicant and Mr.P.S. Dani, learned Senior Counsel for the respondents, at length.

2. By this application under Section 115 of Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicant has challenged the judgment and decree dated 30.9.2013 passed by the learned Judge, presiding over Court room No.25 of the

Court of Small Causes at Mumbai in I.E. & C. Suit No.16/20 of 1998 as also the judgment and decree dated 6.4.2015 passed by the Appellate Bench of Court of Small Causes at Mumbai in 2b(i) Appeal No.64 of 2013. By these orders, the Courts below decreed the suit instituted by the respondents, hereinafter referred to as the 'plaintiffs', under Section 41 of the Presidency Small Cause Courts Act, 1882 (for short, 'Act').

3. In para-1 of the plaint, the plaintiffs asserted that the defendant is a licensee of the plaintiffs in respect of small stall admeasuring 4 ft. X 4 ft. (for short, 'suit stall') at monthly compensation of Rs.25/-. In para-7a, it is alleged that the defendant has in his written statement allegedly claimed the protection under the provisions of the Bombay Rent, Hotel and Lodging House Rent Control Act, 1947 (for short, 'Bombay Rent Act') on the ground that he is a protected licensee / deemed tenant in respect of the suit stall. The plaintiffs asserted that the suit stall is not a premises as defined under Section 5(8) of the Bombay Rent Act. The plaintiffs further asserted that the defendant cannot claim protection as the suit stall cannot be considered as a premises within the meaning of provisions of

the Bombay Rent Act. The defendant is purely a permissive licensee/occupant.

4. The original defendant Suresh Parkar resisted the suit by filing written statement *inter alia* contending that he was inducted by the plaintiffs in the year 1970 and is therefore protected under the provisions of the Bombay Rent Act. Original defendant denied that the suit stall admeasures 4 ft. X 4 ft as alleged and contended that the suit stall is a premises as defined under the Bombay Rent Act. As the suit stall was given to the original defendant prior to 1.2.1973 and since then he is in exclusive use, occupation and possession, he has become deemed tenant / protected licensee.

5. On the basis of the pleadings of the parties, necessary issues were framed. The parties led evidence. After considering the evidence on record, the Courts below held that the suit stall is not premises within the meaning of Section 5(8) of the Bombay Rent Act and consequently the defendant is not a protected licensee/deemed tenant and accordingly decreed the suit. It is against these decisions, the defendant has instituted the present C.R.A..

6. In support of this application, Mr.Khan has taken me through the pleadings of the parties as also oral evidence of PW-1 and PW-2. AS far as evidence of PW-1 is concerned, Mr.Khan submitted that in the first place, he deposed beyond the pleadings. Secondly, PW-1 has no personal knowledge. He submitted that as far as evidence of PW-2 Architect Shri D.S. Joshi is concerned, he submitted that PW-2 deposed contrary to what PW-1 has deposed. He submitted that PW-2 admitted during cross-examination that he does not remember whether the suit stall was open or closed at the time of his visit. PW-2 further stated that the suit stall is located at the entrance of shop No.9. He does not remember the thickness of the wall. He does not remember the length and breadth of the suit stall. PW-2 was shown document Exhibit-34. After perusing Exhibit-34, he stated that the length and breadth of the suit stall is not mentioned. It is not true that the suit stall is affixed in the wall. The witness volunteered that the suit stall is just hanging cupboard on the wall. Mr.Khan, therefore, submitted that PW-2 knows nothing. The Courts below relying upon the evidence adduced by the plaintiffs held that the suit stall is not a premises as defined under Section 5(8) of the Bombay Rent Act.

He, therefore, submitted that as the suit stall is a premises as defined under Section 5(8) of the Bombay Rent Act as also PW-1 categorically admitted that the defendant is in possession of the suit stall since the year 1970, the defendant is a protected licensee / deemed tenant. He, therefore, submitted that the application requires consideration.

7. On the other hand, Mr. Dani invited my attention to the cross-examination of DW-1 Ms.Sujata Suresh Parkar as also finding recorded by the Courts below and submitted that the Courts below have rightly held that the suit stall is not a premises under Section 5(8) of the Bombay Rent Act.

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

9. The short question is whether the suit stall is a premises as defined under Section 5(8) of the Bombay Rent Act.

Section 5(8) of the Bombay Rent Act reads thus:

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

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.....

.....

(8) "premises" means-

- (a) any land not being used for agricultural purposes,
- (b) any building or part of a [building let or given on licence separately] (other than a farm building) including -
 - (i) the garden, grounds, garages and out-houses, if any, appurtenant to such building or part of a building,
 - (ii) any furniture supplied by the landlord for use in such building or part of a building.
 - (iii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof.

but does not include a room or other accommodation in a hotel or lodging house;"

10. If it is held that the suit stall is a premises, in view of admission of PW-1 that the defendant is in the suit stall since the year 1970, it has to be held that the defendant is a protected licensee / deemed tenant. However, if it is held that the suit stall is not a premises as per Section 5(8) of the Bombay Rent Act, then certainly the plaintiffs must succeed.

11. In order to consider this question, it is necessary to refer to the admissions given by DW-1 Ms.Sujata Parkar during the course of cross-examination. DW-1 admitted that the suit stall and the neighbouring stalls are on the outer wall of the Johnson Restaurant. She was confronted with the photographs.

In para-4 she was confronted with the inspection report at Exhibit-84 which showed that the suit stall is like a cupboard and which is projected on the footpath.

12. As far as the trial Court is concerned, the trial Court has considered this aspect from para-24 to 43. After considering the evidence on record, the trial Court ultimately held that the suit stall is not a premises within the meaning of Section 5(8) of the Bombay Rent Act. As far as the Appellate Court is concerned, in para-12, the Appellate Court considered the report submitted by architect PW-2 Shri D.S. Joshi. The Appellate Court held that PW-2 is an expert and has technical knowledge. There is nothing on record to impeach the credibility of said witness. Said witness is not an interested or partisan witness and he appears to be an independent witness having sound technical knowledge being an Architect. The evidence of PW-2 shows that the suit stall is merely a hanging structure having no permanent nexus with the suit building or suit premises. In para-13, the Appellate Court considered the inspection report at Exhibit-35 and observed that the suit stall is affixed to the outer wall by way of affixing nails and screws on

the said wall. Having regard to this fact, the disputed structure i.e. suit stall is an external attachment to outer wall of the premises by way of affixing of nails and screws in the said wall. There is nothing on record which shows that the suit stall is necessary for the beneficial enjoyment of the suit building and property. The suit stall can be removed as it is affixed by nails and screws. The Appellate Court, therefore, concluded that the suit stall does not fall within the ambit of term “premises” as defined under Section 5(8) of the Bombay Rent Act. The Appellate Court also held that merely because the suit stall lies in between two pillars does not make it part and parcel of the building for its beneficial enjoyment and, therefore, cannot be said to be a premise within the meaning of Section 5(8) of the Bombay Rent Act. In para-15, the Appellate Court considered the evidence of DW-1 Ms. Sujata Parkar. After considering the decisions cited before it, the Appellate Court held that the suit premises is not a premises as contemplated by Section 5(8) of the Bombay Rent Act.

13. Thus the Courts below after appreciating the evidence on record have concurrently held that the suit stall is not a

premises as contemplated under Section 5(8) of the Bombay Rent Act. I, therefore, do not find that the Courts below have committed any error in decreeing the suit. The defendant was not in a position to demonstrate that the findings recorded by the Courts below are perverse being based on no evidence or that they are contrary to evidence on record. The defendant was not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the Courts below. Hence no case is made out for invocation of powers under Section 115 of C.P.C.. Civil Revision Application fails and the same is dismissed. In the circumstances of the case, there shall be no order as to costs.

14. At this stage, Mr. Khan orally applies for stay of this order for a period of twelve weeks from today. He further states that the applicant and all adult family members using the suit stall are ready and willing to give usual undertaking within two weeks from today. Learned Counsel for the respondents opposes said prayer.

15. Having regard to the fact that applicant desires to challenge this order before the Apex Court, in my opinion, ends

of justice would be served by staying operation of this order for a period of twelve weeks from today subject to the applicant and all adult family members using the suit stall giving usual undertaking to this Court within two weeks from today incorporating therein: (i) that they are in actual possession of the suit stall and nobody else is in possession; (ii) that they have so far neither created third party interest nor parted with the possession of the suit stall; (iii) that they will hereafter neither create third party interest nor part with the possession of the suit stall; (iv) that they will pay the arrears of compensation to the plaintiffs within two weeks from today; and (v) that in case the applicant is unable to obtain suitable orders within twelve weeks from today from the Superior Court, they will deliver vacant and peaceful possession of the suit stall to the respondents.

16. In view thereof, notwithstanding dismissal of Civil Revision Application, this order shall remain stayed for a period of twelve weeks from today, subject to the applicant filing undertaking in the aforesaid terms within two weeks from today. The applicant shall file the undertaking, in aforesaid terms,

within a period of two weeks from today, with copy in advance to the other side. In case the applicant does not file undertaking in the above terms and/or arrears of compensation, if any, are not paid to the plaintiffs within two weeks from today, the interim order shall stand vacated without further reference to the Court. List the application for compliance after three weeks. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)