

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8711 OF 2014

Smt. Ujwala Pedgaonkar

.. Petitioner

Versus

Jaisingh Babubhai Gohil and another

.. Respondents

Mr. S. B. Shetye, for the Petitioner.

Mr. Bharat Mehta a/w Mr. Anil Chauhan, Mr. Jash Vyas i/by Mr. R. D. Dave, for the Respondent No.1.

CORAM : R.M. SAVANT, J.

DATE : 12th FEBRUARY 2016

PC.

1. The writ jurisdiction of this Court is invoked against the judgment and order dated 05.05.2014 passed by the Appellate Bench of the Small Causes Court, Mumbai, by which, the Appeal in question being PSCC Appeal No.10 of 2011 came to be dismissed and resultantly, the part decreeing of the suit by the Trial Court by judgment and order dated 20.03.2010 came to be confirmed.

2. The suit in question was filed under the provisions of the Presidency Small Cause Courts Act, 1882 (for short "PSCC Act") for eviction of the Petitioner herein from the premises in question being Flat No.173 in Building No.11, Rajendra Nagar Co-operative Housing Society

Ltd., Dattapada Road, Borivali (E), Mumbai-400 066. The said premises were allotted to the Respondent herein by the Maharashtra Housing and Area Development Authority (for short "MHADA"). The Respondent herein was at the relevant time working in the ONGC and it is the case of the Respondent that the Petitioner herein approached the Respondent through one common friend Anil Dave for being permitted to reside in the premises on a temporary basis. It is the case of the Respondent that he acceded to the said request and permitted the Petitioner herein to reside in the premises on the monthly compensation of Rs.250/- per month. Since the Respondent was at the relevant time working in Cambay, Gujarat, on his return to Mumbai the Respondent requested the Petitioner to vacate the premises. However, on his refusal to do so, a notice came to be issued terminating the licence which was granted to the Petitioner to reside in the premises in question. Thereafter the instant suit came to be filed under Section 41 of the PSCC Act, for seeking possession from the Petitioner. It was the case of the Petitioner herein that the Respondent approached him through the said Anil Dave that since he is not in a position to pay the installments of the MHADA, the Petitioner may occupy the premises and pay the amount due to MHADA. It is the case of the Petitioner that in terms of the said understanding the Petitioner made various payments to MHADA and the receipts in respect of which the Petitioner has produced

the relevant documents on record. The Trial Court framed the relevant issues and adjudicated upon the suit. Pertinently, in the suit the parties did not examine the said Anil Dave though he was the middle man through whom it was alleged that the licence was created by the Plaintiff and through whom it was the case of the Respondent that the transaction for sale of the premises had allegedly taken place. In view thereof, the Trial Court observed that since the said Anil Dave could have been the best witness and since has not been examined, the suit would have to be adjudicated on the basis of the preponderance of probabilities i.e. whose case is more probable for being accepted. The Trial Court has taken into consideration the documents produced by the Defendants on the ground that most of them were xerox copies and since it was the case of the Defendants that the transaction of sale had taken place in their favour, it was necessary for the Defendants to produce the original copies and since the original copies were not produced, the xerox copies were not taken into consideration. The Trial Court on the basis that the allotment of the premises was made to the Respondent by the MHADA and that the Respondent was undisputedly working in ONGC and was residing out of Mumbai and considering the fact that the said Anil Dave was not examined by the Petitioner i.e. the original Defendant held that it is the case of the Plaintiff is more probable than the case of the Defendant and

therefore, partly decreed the suit in question and directed the Defendant i.e. the Petitioner herein to hand over possession by its judgment and order dated 20.03.2010.

3. The aggrieved Defendant No.2 carried the matter in Appeal by way of PSCC Appeal No.10 of 2011. The Appellate Bench of the Small Causes Court tried the Appeal and on a re-appreciation of the material on record did not deem it appropriate to interfere with the judgment and decree of the Trial Court by reiterating the findings of the Trial Court on account of the non-examination of the said Anil Dave as well as the husband of the Petitioner who was the Defendant No.1 as he being the witness to the transaction was the best witness. Hence, there are concurrent orders passed by the Courts below against the Petitioner and in favour of the Respondent.

4. The Learned Counsel appearing on behalf of the Petitioner Mr. S. B. Shetye would seek to reiterate the case of the Petitioner before the Courts below. The Learned Counsel would seek to place reliance on the evidence witnessing the alleged payments made by the Defendant to the MHADA and also to the Plaintiff i.e. Respondent herein. It was the submission of the Learned Counsel that having regard to the supervening event of the building being demolished pursuant to the redevelopment

undertaken, the Courts below ought not to have passed the decree. It was also contended that the Defendants i.e. the Petitioners herein have filed their own suit claiming declaration of title in respect of the flat in question which suit is numbered as Suit No.3469 of 1983 now numbered as Suit No.9687 of 1999 on its transfer to the City Civil Court, Mumbai. In my view, it is not possible to accept the said contentions urged on behalf of the Petitioner by the Learned Counsel. As indicated above, it is on the basis of the material on record that the Courts below have recorded the findings in the suit as well as the Appeal. In so far as the demolition of the building is concerned that is an aspect for the Executing Court to consider and that would have no bearing on the adjudication by the Courts below. In so far as the last contention is concerned, since the Petitioner has already filed the suit claiming title and since injunction is running in favour of the Petitioner, it is for the Petitioner to prosecute the said suit and take up such contentions including the efficacy of the present adjudication on the adjudication of the said suit. Hence, no case for interference in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]