

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Civil Revision Application NO. 844 OF 2014

Amrut Tours And Travels Pvt.ltd. ...Applicant

Versus

Bhagwandas Laxmidas Daiya
& Anr. ...Respondents

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Mr.P.S. Dani, Senior Advocate i/b. Vaibhav R. Gaikwad, Advocate
for the Applicant.

Mr.S.M. Oak a/w. Mr. Sagar Joshi, Advocate for Respondent
No.1.

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CORAM : R. G. KETKAR, J.

DATE : 13th June, 2016

P.C.

1. Heard Mr.P.S. Dani, learned Senior Counsel for the
applicant and Mr.S.M. Oak, learned Counsel for respondent
No.1, at length.

2. By this application under Section 115 of Code of Civil
Procedure, 1908 (for short, 'C.P.C.'), the applicant, hereinafter
referred to as 'defendant No.1', has challenged the judgment and
decree dated 31.1.2013 passed by learned Judge, presiding over
Court room No.25 of Small Causes Court of Mumbai in R.A.E.
Suit No.1016/1722 of 2008 as also judgment and decree dated
6.5.2014 passed by Appellate Bench of Small Causes Court at

Bombay in Appeal No.29/2013. By these orders, the Courts below decreed the suit instituted by the 1st respondent, hereinafter referred to as 'plaintiff', under Section 16(1)(e) of the Maharashtra Rent Control Act, 1999 (for short, 'Act').

3. The plaintiff instituted the suit against defendant No.1 and respondent No.2, hereinafter referred to as 'defendant No.2', *inter alia* for recovery of possession of shop No.6 on the ground floor of the property known as “Vishramwadi” building, block Nos.1 and 2 situate on plot bearing cadastral survey No.1/6 of Sion Division, Opposite Gandhi Market, Near King's Circle Station, Sion Road, Mumbai- 400 022 (for short, 'suit premises') on the ground under Sections 16(1)(a) read with Section 108(o) of the Transfer of Property Act, 1882 (for short, 'T.P. Act'), Section 16(1)(b), 16(1)(n) and 16(1)(e) of the Act. The Courts below had decreed the suit only under Section 16(1)(e) of the Act. It is, therefore, necessary to confine the discussion as regards this ground.

4. The plaintiff alleged that the suit premises were let out to defendant No.1. Defendant No.1 was carrying out its business of tours and travels. Defendant No.1 however let the suit

premises and inducted defendant No.2 in the suit premises.

5. Defendant No.1 resisted the suit denying the allegations made by the plaintiff that it has left the suit premises and contended that defendant No.1 is in exclusive use, occupation and possession of the suit premises. Defendant No.1 never left the suit premises and stopped its business activities as alleged by the plaintiff. Defendant No.1 contended that defendant No.2 has nothing to do with the suit premises and defendant No.2 did not claim any interest in the suit premises at any point of time. Defendant No.1 contended that in fact one of the co-owners gave permission in writing to grant leave and licence in favour of defendant No.2 for a period of eleven months.

6. On the basis of the pleadings of the parties, learned trial Judge framed necessary issues. After considering the evidence on record, learned trial Judge decreed the suit only under Section 16(1)(e) of the Act. Aggrieved by that decision, defendant No.1 preferred appeal which was dismissed by the Appellate Court. It is against these decisions, defendant No.1 has instituted the present C.R.A..

7. In support of this application, Mr. Dani strenuously contended that Section 16(1)(e) of the Act provides for a ground of eviction when the tenant has unlawfully sub-let or given on licence, the whole or part of the premises or assigned or transferred in any other manner his interest therein. He submitted that the Courts below found that defendant No.1 is in joint possession with defendant No.2. In other words, defendant No.1 never parted with the possession of the suit premises and that defendant No.2 was not in exclusive possession. He submitted that defendant No.1 specifically pleaded that one of the co-owners, namely, Smt. Laxmibai Daiya gave permission in writing to grant leave and licence in favour of defendant No.2 for a period of eleven months. Said letter is referred to in the list of documents filed along with the written statement. The Courts below and particularly the trial Court discarded said letter on three grounds, namely, (i) defendant No.1 did not plead this fact in the written statement, (ii) witness examined on behalf of defendant No.1 deposed that for the first time he met Laxmiben in the year 2008. He submitted that this is factually incorrect as the witness of defendant No.1 met Laxmiben sometime in 1998 when the tenancy agreement was entered into between the

plaintiff and defendant No.1 and (iii) that the letter dated 14.12.2007 is not referred in the subsequent correspondence.

8. Mr. Dani submitted that in paragraph-12 of the written statement, defendant No.1 specifically asserted obtaining permission from Laxmiben for granting leave and licence in favour of defendant No.2 for a period of eleven months. The Courts below, therefore, committed an error in holding that there is no pleading to that effect. He, therefore, submitted that the application requires consideration.

9. On the other hand Mr.Oak supported the impugned orders. He submitted that after appreciating the evidence on record, the Courts below have concurrently decreed the suit under Section 16(1)(e) of the Act. He, therefore, submitted that no case is made out for invocation of powers under Section 115 of C.P.C.

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

11. It is not in dispute that the tenancy agreement was

entered into between Mrs.Laxmi M. Daiya and defendant No.1 on 9.4.1999. Clause (6) of said agreement reads thus:

“6) The Tenant shall not sub-let and/or assign or transfer it's interest in the demised premises or any part thereof. The tenant shall not part with possession of the whole or part of the demised premises to anyone either on the basis of leave and license or otherwise. The Tenant shall not permit any one to do business in the demised premises.”

12. Defendant No.1 contended in para-12 of the written statement that Laxmiben gave permission in writing to grant leave and licence in favour of defendant No.2 for a period of eleven months. Letter dated 14.12.2007 is produced at Exhibit-63. Defendant No.1 addressed that letter to Laxmiben M. Daiya requesting her to allow them to grant for leave and licence in favour of defendant No.2 for a period of eleven months. Defendant No.1 undertook removing said licensee after or on or before the expiry of period of licence. It is in this context relevant to refer to notice dated 9.1.2008 at Exhibit-57 issued by the landlords through Advocate Rekha D. Kinger. Para-5 of this notice reads thus :

“(5) My clients says & submits that they

have got information from the reliable sources that you have created third party Leave & License Agreement in the said office premises, hence you are requested to clarify the present status of the said office premises i.e. whether you are carrying out your own activities or created L/L Agreements / Sub letting / change of the uses etc. etc. ? If you fail to give TRUE FACTS within a period of seven working days on receipt of this notice by you, my clients will presume that you have sub-letted the said offices & accordingly fit legal actions will be taken against you entirely at your risks, costs & consequences.”

13. Defendant No.1 replied this notice through Advocate N.L. Mishra on 14.3.2008 which is at Exhibit-58. Reply to para-5 reads thus :

“With reference to Para 5, my client says that the tenanted premises continued to be in use, possession and occupation of my client, my client denied that they or any of them have committed acts contrary to law and terms of tenancy as alleged. My client says that the tenanted premises is in use and possession of my client and my client is carrying their business according the law. If your client is ill advised to initiate any legal action against my client then in the event my clients shall defend the same which please note.”

14. Perusal of para-5 of the notice, extracted hereinabove, shows that it was case of the landlords that they got information from reliable source that defendant No.1 created third party

leave and licence agreement and requested defendant No.1 to clarify the present status of the suit premises, namely, whether defendant No.1 is carrying out own activities or created leave and licence agreement / subletting / change of the user etc. Perusal of reply dated 14.3.2008 shows that defendant No.1 asserted that the tenanted premises continued to be in possession of defendant No.1. In other words, perusal of reply does not indicate that defendant No.1 even remotely referred to permission dated 14.12.2007 given by Laxmiben for inducting defendant No.2 on leave and licence basis.

15. As far as trial Court is concerned, the ground of subletting is considered from paras-25 to 38. In para-29, learned trial Judge has referred to the letter dated 14.12.2007 at Exhibit-63 as also notice dated 9.1.2008 at Exhibit-57 issued to defendant No.1 and reply dated 14.3.2008 at Exhibit-58. After considering these documents, learned trial Judge specifically recorded a finding that defendant No.1 has manipulated and forged the letter. Learned trial Judge also commented on production of letter dated 14.12.2007 at Exhibit-63 (wrongly mentioned as Exhibit-68). The learned trial Judge has referred

to letter dated 14.12.2007 in para-37. Learned trial Judge referred to the written statement and observed that defendant No.1 did not refer the letter dated 14.12.2007 though he relied upon the letter in the list of documents annexed to the written statement. Learned trial Judge thereafter referred to the reply dated 14.3.2008 (Exhibit-58) wherein there is no reference to letter dated 14.12.2007 at Exhibit-63. In para-38, learned trial Judge has referred to the notice dated 9.1.2008 at Exhibit-57 and the reply dated 14.3.2008 at Exhibit-58 and observed that if at all Laxmiben had really given permission by letter dated 14.12.2007 in the reply dated 14.3.2008, defendant No.1 would have certainly disclosed the said fact. This material circumstance goes against defendant No.1. In my opinion, no fault can be found with these findings.

16. As far as Appellate Court is concerned, ground under Section 16(1)(e) is dealt with in paragraphs-12 to 17. Appellate Court also referred to letter dated 14.12.2007 at Exhibit-63, notice dated 9.1.2008 at Exhibit-57 and reply dated 14.3.2008 at Exhibit-58 and substantially agreed with the reasoning of the trial Court. Appellate Court observed that it is very doubtful that

Laxmiben had given consent in favour of defendant No.1. Appellate Court also referred to letter dated 25.9.2008 at Exhibit-59 wherein defendant No.1 did not make reference to letter dated 14.12.2007. Appellate Court, therefore, held that it is doubtful that Laxmiben gave permission to defendant No.1. After considering the material on record and in particular clause (6) of tenancy agreement dated 9.4.1999 as also letter dated 14.12.2007 at Exhibit-63, notice dated 9.1.2008 at Exhibit-57 and reply dated 14.3.2008 at Exhibit-58, I do not find that the Courts below committed any error in decreeing the suit under Section 16(1)(e) of the Act. Defendant No.1 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. Defendant No.1 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 for invocation of powers under Section 115 of C.P.C. is made out. Civil Revision Application fails and the same is dismissed.

17. At this stage, Mr. Dani orally applies for stay of this

order for a period of twelve weeks from today. He further states that the applicant is ready and willing to give usual undertaking within four weeks from today. Learned Counsel for respondent No.1 opposes said prayer.

18. 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 all the Directors of the applicant giving usual undertaking to this Court within four weeks from today incorporating therein: (i) that the applicant is in actual possession of the suit premises and nobody else is in possession; (ii) that the applicant has so far neither created third party interest nor parted with the possession of the suit premises; (iii) that the applicant will hereafter neither create third party interest nor part with the possession of the suit premises; (iv) that the applicant will pay the arrears of rent if any to the plaintiff within four 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, it will deliver vacant and peaceful possession of the suit premises to the

plaintiff.

32. 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 four weeks from today. The applicant shall file the undertaking within a period of four weeks from today, with copy in advance to the other side. In case the applicant does not file undertaking incorporating the above clauses and/or arrears of rent are not paid within four weeks from today, the interim order shall stand vacated without further reference to the Court. List the application for compliance after five weeks from today.

(R. G. KETKAR, J.)

Deshmane (PS)