

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 53 OF 2016**

Shri Hiralal Bhagwanji Nijamkar

..Applicant

Vs

Smt. Sheelabai Baburao
Lokhande

.. Respondent

Mr. Sachin Dhakephalkar, Advocate for Applicant.

CORAM : R.G.KETKAR,J.

DATE : 07/06/2016

PC:

1. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicant has challenged the Judgment and decree dated 9.6.2015 passed by the learned District Judge-10, Pune in Civil Appeal No.402 of 2013. By that order, the learned District Judge allowed the appeal preferred by the respondent, hereinafter referred to as 'defendant', and quashed and set aside the Judgment and decree dated 29.4.2013 passed by the learned Judge of the Small Causes Court, Pune in Civil Suit No.282 of 2007. The learned District Judge dismissed the suit instituted by the applicant, hereinafter referred to as 'plaintiff', for declaration that he is a tenant of the defendant on monthly rent of Rs.200/- inclusive of taxes.

2. The plaintiff came with the case that he is in possession of room admeasuring 12'x10', situate on the ground floor in House

No.947, Kasba Peth, Pune (for short, 'suit premises') since last 19 years. The plaintiff is residing along with his family. Tenancy commences as per English calendar from 1st day of month ending on the last day. The monthly rent is Rs.200/-. Though the plaintiff was paying regularly rent, the defendant did not issue rent receipts. The plaintiff had paid rent upto May 2005. In June 2005. The defendant claimed rent of Rs.350/-. As the financial condition of the plaintiff was not sound, he could not accede to the request of the defendant. As the plaintiff was not willing to pay that amount, the defendant called upon the plaintiff to vacate the suit premises. In June 2005, the plaintiff remitted amount of Rs.200/- by Money Order. The defendant refused to accept that Money Order.

3. Plaintiff further came with the case that on 19.9.2005 he instituted proceedings in the Small Causes Court for fixation of standard rent. The defendant filed reply dated 17.1.2006, inter alia, contending that the plaintiff is not a tenant and that the plaintiff's mother was permitted to reside in the suit premises gratuitously. As the defendant has challenged tenancy rights of the plaintiff, he is constrained to institute the present suit for declaration of his tenancy rights.

4. Defendant resisted the suit by filing Written Statement. In support of his case, the plaintiff examined himself as also one

more witness. The defendant examined herself as also one more witness Anant Jadhav. After considering the evidence on record, the learned trial Judge decreed the suit. Aggrieved by that decision, the defendant preferred appeal which is allowed by the impugned order. It is against this order, the plaintiff has instituted the present Civil Revision Application.

5. In support of this Application, Mr. Dhakephalkar strenuously contended that the plaintiff is residing in the suit premises for more than 19-20 years. He submitted that though the plaintiff was regularly paying the rent, the defendant did not issue rent receipts. The plaintiff did not insist issuance of rent receipts so as to spoil relationship between the parties. He invited my attention to the oral evidence led by the plaintiff, namely, PW 1 and PW 2. He submitted that the learned District Judge merely considered document dated 21.2.1991 at Exh.45 and ignored the other documentary evidence, namely Money Order which was not accepted by the defendant. Non-consideration of relevant and material evidence has vitiated the impugned order. He also invited my attention to the order passed by the learned trial Judge and submitted that the learned trial Judge rightly disbelieved the case made out by the defendant of inducing plaintiff's mother gratuitously in the suit premises.

6. I have considered the submissions advanced by Mr

Dhakephalkar. I have also perused the material on record. As noted earlier, the plaintiff came with the case that he is residing in the suit premises for more than 19 years and that the defendant did not issue rent receipts despite his regularly paying rent. He further came with the case that till May 2005 he had paid rent in cash to the defendant. Defendant demanded Rs.350/- towards monthly rent. As he refused, he had remitted Rs. 200/- by Money Order which the defendant had refused to accept. Mr. Dhakephalkar submitted that the learned District Judge has ignored this vital piece of evidence. It is not possible to accept this submission for more than one reason. In the first place, except the solitary money order remitted in June 2005, there is no documentary evidence on record to establish tenancy of the plaintiff. Secondly, the plaintiff has examined PW 2 Raju to substantiate oral agreement regarding tenancy. It is the case of the plaintiff that in the presence of PW 2 Raju, oral agreement regarding tenancy took place. However, it is relevant to note that no such case is pleaded by the plaintiff. The trial Court as also Appellate Court both have categorically recorded that there is no documentary evidence to substantiate the plaintiff's case about tenancy. The learned District Judge has considered this aspect in paragraph 10 of the impugned order. The learned District Judge has noted that the claim of the plaintiff is not supported by any

documentary evidence though he claims to be tenant of the suit premises since years together. As far as the case of oral agreement is considered, that is considered in paragraph 11 of the impugned order. Learned District Judge has observed that the theory of oral agreement regarding tenancy is not even pleaded by the plaintiff.

7. In paragraph 12, learned District Judge observed that though the trial Court held that there is no documentary evidence to substantiate the case of the plaintiff, the trial Court drew inferences and decreed the suit only on the basis of those inferences. The inferences so drawn by the trial Court were without there being any cogent material.

8. After considering the material on record, I do not find that the learned District Judge has committed any error in dismissing the suit. The plaintiff was not in a position to demonstrate that the findings recorded by the learned District Judge are perverse being based on no evidence or that on the basis of evidence on record, no reasonable person would have come to that conclusion. In the light of the aforesaid discussion, no case is made out for invocation of powers under section 115 of C.P.C. In the result, Application fails and the same is dismissed.

(R.G.KETKAR, J.)