

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 487 OF 2016

Smt.Rajkallydevi Tulsi Kanojia ..Applicant

Vs

1. Mr.Harbhajansingh Baxisingh .. Respondents
Ajimal and Anr.

WITH

CIVIL REVISION APPLICATION (ST) NO.24000 OF 2016

Smt.Rajkallydevi Tulsi Kanojia ..Applicant

Vs

1.Smt. Shankri Baxisingh Ajimal and .. Respondents
Ors.

Ms. Vaishali P. Benere with Mr. Kamalakar L. Koli, Advocate for Applicant.

Mr. Harbhajansingh Baxisingh Ajimal, Respondent-in-person present.

CORAM : R.G.KETKAR,J.
DATE : 26/09/2016

PC:

1. Heard Ms.Vaishali Benere, learned counsel for the applicant and Mr. Harbhajansingh Ajimal, respondent-in-person in both the Applications at length.

2. Civil Revision Application No. 487 of 2016 arises out of Judgment and decree dated 7.5.2016 passed by the Appellate Bench of the Small Causes Court in R. Appeal No.121 of 2009. By

that order, the Appellate Court allowed the Appeal preferred by the respondents, hereinafter referred to 'landlord', and quashed and set aside the Judgment and decree dated 29.4.2009 passed by the learned Judge presiding over Court Room No.38 of the Small Causes Court at Mumbai in R.A.E. Suit No.100/313 of 2005. The Appellate Court decreed the suit under section 16(1)(e) of the Maharashtra Rent Control Act, 1999 and directed the defendants, hereinafter referred to as tenants to hand over vacant and peaceful possession of shop no.20, Harbhajan Singh B. Ajimal Chawl No.2, Adarsh Nagar, Kurar Village, Malad (E), Mumbai-400 097 (for short, 'suit premises') to the plaintiffs within three months.

3. Civil Revision Application (ST) No.24000 of 2016 arises from the Judgment and decree dated 29.4.2009 passed by the learned Judge presiding over Court Room No.38 of the Small Causes Court at Mumbai in R.A.D. Suit No.298 of 2005 as also Judgment and decree dated 7.5.2016 passed by the Appellate Bench of the Small Causes Court in R. Appeal No.120 of 2009. By these orders, the Courts below dismissed the suit instituted by the tenants (1) Smt. Rajkallydevi Tulsi Kanojia, (2) Ram Asre Bhageluram Joshi, for declaration of their tenancy rights in respect of the suit premises.

4. In support of C.R.A. No.487 of 2016, Ms Benere strenuously

contended that the Appellate Court committed serious error in holding that the landlord has established ground of unlawful subletting. She submitted that the Appellate Court has decreed the suit without considering the documentary evidence produced by the tenants. She submitted that in paragraph 43, the Appellate Court observed that licence of the suit premises under the Bombay Shops and Establishment Act, 1948 was issued in the name of defendant no.2 Ram Asre Joshi @ Rama Kanojia. The said statement is factually incorrect and contrary to record. The licence was issued in the name of wife of defendant no.2. The Appellate Court thereafter proceeded to hold that the very fact that the licence was issued in the name of defendant no.2 itself shows that defendant no.2 is in illegal occupation and the suit premises were unauthorisedly sublet by the deceased tenant-Mr.Tulsi Mathura to defendant no.2.

5. Ms. Benere has taken me through the findings recorded by the trial Court while dismissing the suit of landlord as also the findings recorded by the Appellate Court while decreeing the suit. She has also taken me through the evidence of Ram Joshi and in particular paragraph 3, wherein he deposed that initially the licence under the Bombay Shops and Establishment Act ,1948 was issued in the name of Mr. Tulsi Mathura. After the death of his father-in-law, the said certificate was amended and the name of

Tulsi Mathura, his brother-in-law was deleted and the name of his wife, daughter of the deceased tenant, was added in the said certificate. Defendant No.2-Ram Joshi produced the certificate to that effect at Annexure -2.

6. She further submitted that during the pendency of the Appeal, the area where the suit premises is situate, was declared as a slum area. In view thereof, the tenant filed application Exh.17 under Order 41, Rule 27 of C.P.C for production of judgment dated 13.2.2014 rendered by the Tribunal in Appeal No.26 of 2012. By that order, the Tribunal dismissed the Appeal preferred by the landlord challenging declaration dated 24.5.2012 which was published in the Maharashtra Government Gazette dated 7th to 13th June, 2012 declaring the area as a slum area under section 4(1) of the Maharashtra slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short, '1971 Act'). The Appellate Court allowed the application and permitted tenant to produce on record the order of the slum Tribunal. She submitted that this aspect goes to the root of the matter.

7. Ms Benere further submitted that aggrieved by the order of the Tribunal, landlord preferred Writ Petition no.4747 of 2014 in this court. After hearing both sides, the petition was admitted by issuing Rule on 22.12.2015. However, this Court refused interim

relief. In other words, she submitted that while admitting the petition instituted by the respondent against the order of the slum Tribunal is admitted this Court refused interim relief, Application also requires consideration. In any case, so long as the order passed by the Tribunal is not set aside, Respondent-landlord cannot execute the eviction decree.

8. On the other hand, the landlord who appears in-person has taken me through Written Statement and in particular paragraph 10 as also cross examination of Ram Joshi. In paragraph 10 of the Written Statement filed on behalf of the tenant, it is asserted that Tulsi Mathura-deceased tenant left behind four daughters and defendant no.1-widow. Four daughters are well settled by accepting shares from deceased Tulsi Mathura and the suit premises was given to defendant no.2. Ram Joshi has thereafter given details of family settlement and has asserted that defendant no.2 has taken the suit premises and accordingly the said fact is informed to the plaintiff by letter dated 24.8.2004.

9. Landlord has also taken me through the cross examination of Ram Joshi wherein he admitted that all the five daughters of Rajkallydevi and defendant no.2 have not claimed any rights in the suit premises. He further denied that his statement in paragraph 10 of the Written Statement that he being defendant no.2 claimed tenancy rights in respect of the suit premises and

the same is accepted by the plaintiff, is a false statement. In other words, he submitted that even in the cross examination Ram Joshi asserted that defendant no.2 claims tenancy rights in the suit premises and the said fact was accepted by the plaintiff.

10. I have considered the rival submissions advanced by the learned counsel for the parties. I have also perused the material on record. As noted earlier, the eviction suit filed by the landlord was dismissed by the trial Court and was decreed by the Appellate Court. While decreeing the suit, the Appellate Court considered the assertions made on behalf of the tenants in paragraph 10 of the Written Statement. Relevant portion of paragraph 10 reads thus:

“10. With reference to para 2, it is true that the defendant no.1 as well as defendant no.2 claimed the tenancy rights in respect of the above suit premises and the same is accepted by the plaintiff. It is true that the deceased tenant Shri Tulsi Mathura has left behind four daughters along with the abovenamed defenant no.1 and all are well settled by accepting the shares from the deceased Mr. Tulsi Mathura Kanojia and the suit premises is given to the defendant no.2 according to the shares came under defendant no.2. The defendant further states that accordingly to the family settlement some legal heirs has taken one shop premises which is situated at **Kandivali and some are taken shares at village property and the defendant no.2 has taken the present tenement suit premises and same is informed to the plaintiff by giving letter dated 24.8.2004.**”

In the cross examination, Ram Joshi admitted thus:-

“It is true that all the five daughters of Rajkali Devi and also myself have not claimed any rights in respect of the suit

premises. **It is not true that my statement in para no.10 of my written statement that I being the defendant no.2 claimed the tenancy rights in respect of suit premises and same is accepted by plaintiff is a false statement.** It is wrongly recorded in my written statement that deceased tenant Tulsi Mathura has left behind him four daughters.”

(emphasis supplied)

11. The Appellate Court considered these admissions from paragraph 43 onwards and has held that defendant no.2 is in illegal occupation. It shows that the suit premises were unauthorisedly sublet by the deceased tenant to defendant no.2. In view thereof, I do not find that the Appellate Court committed any error in decreeing the suit.

12. Ms. Benere submitted that having regard to the fact that the area where the suit premises is situate, is declared as a slum area under the Act of 1971, the suit is liable to be dismissed. In any case, so long as the writ petition filed by the landlord against the decision of the Tribunal is not allowed, he cannot execute the decree.

13. Landlord on the other hand invited my attention to Section 22 of the Act of 1971. He submitted that it is nobody's case that the area was declared as slum area prior to institution of the suit. The area was declared as slum area pending the Appeal. In view of Section 22(1)(b), he will approach the Competent Authority before executing the eviction decree.

14. It is not in dispute that the area where the suit premises is situate was declared as a slum area by Notification published on 7th to 13th June, 2012, that is to say, after the suit was decided on 29.4. 2009. Section 22(1)(b) reads thus:-

22. Proceedings for eviction of occupiers 2 [or for issue of distress warrants] not to be taken without permission of competent Authority (1) Notwithstanding anything contained in any other law for the time being in force, no person shall except with the previous permission in writing of the Competent Authority, -

(a) institute, after commencement of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, any suit or proceeding for obtaining any decree or order for the eviction of any occupier from any building or land 3[in a slum area or for recovery of any arrears of rent or compensation from any such occupier, or for both; or]

(b) when any decree or order is obtained in any suit or proceeding instituted before such commencement for the; eviction of an occupier from any building or land in such area 4[or for recovery of any arrears of rent of compensation from such occupier, or for both] execute such decree 5[or order; or]

[(c) apply to any Judge or the Registrar of the Small Cause Court under Chapter VIII of the Presidency Small Cause Courts Act, 1882, in its application to the State of Maharashtra, or to any Court of Small Causes under Chapter IV-A of the Provincial Small Cause Courts Act, 1887, in its application to the State of Maharashtra, for a distress warrant for arrears of rent against any occupier of a house or premises in a slum area.]

15. In view thereof, the landlord will not be in a position to execute the decree unless and until either he obtains permission from the Competent Authority as contemplated by Section 22(1)

(b) of the Act of 1971 or he succeeds in the Writ Petition so instituted. Understood thus, I do not find any merit in this submission as well. Hence, Civil Revision Application No.487 of 2016 fails and the same is dismissed.

16. This brings me Civil Revision Application (Stamp) No.24000 of 2016 instituted by the tenant. Tenant has instituted suit for declaration of the tenancy rights in respect of the suit premises. The Courts below dismissed the suit on the ground that the suit is barred by limitation.

17. Ms Benere submitted that the Courts below committed serious error in dismissing the suit on the ground of limitation in as much as though in the plaint the tenant has asserted that in the month of April, 1999, they approached landlord with a request to accept rent and municipal taxes and the landlord refused to accept the same by alleging that the landlord does not know the tenant and also gave threat that he will remove all his belonging of the family from the suit premises, nonetheless the landlord accepted Rs.30000/- from the tenant on 30.8.2004 and, therefore, the courts below were not justified in dismissing the suit on the ground of limitation.

18. On the other hand, the landlord has taken me through the correspondence in that regard and submitted that he has denied receipt of Rs.30,000/-. Apart from that, tenant has not

substantiated the alleged payment of Rs.30,000/- by examining any witness.

19. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, the Courts below have dismissed the suit on the ground that the suit is barred by limitation. The Courts below held that the period of limitation under Article 58 will begin from April, 1999 as the landlord refused to accept claim of tenant. The suit ought to have been instituted within three years from April, 1999 and as the suit is instituted in the year 2005, it is clearly barred by limitation. Reliance placed on correspondence does not advance the case of the tenant. With the assistance of the learned counsel appearing for the parties, I have perused the notice dated 13.8.2004 issued by the landlord, reply dated 24.8.2004 given by the tenant through Advocate as also the notice dated 18.12.2004 issued by the tenant through lawyer. In paragraph 2 of the notice dated 18.12.2004, tenant has asserted that he had paid Rs.30,000/- in cash as demanded by the landlord on 30.8.2004. It is however material to note that the tenant came with the case that the said payment was made in view of the assurance given by the landlord that he will adjust arrears and issue rent receipt in the name of defendant no.1 and defendant

no.2. However tenant did not call upon landlord to issue rent receipt and waited till 18.12.2004. Apart from that, admittedly tenant did not examine any witness to substantiate his claim that he has paid Rs.30000/- in cash to the landlord. Thus, it cannot be said that the period of limitation will start from 2004 and therefore the suit instituted in the year 2005 is within limitation. The Courts below rightly held that time will begin to run from April 1999 and as the suit is not instituted within three years therefrom, it is clearly barred by limitation. Hence, Civil Revision Application (ST) No. 24000 of 2016 fails and the same is dismissed.

20. At this stage, Ms.Benere orally applies for stay of this order for a period of 12 weeks from today. He states that the applicant is in possession of the suit premises and nobody else is in possession. The applicant has neither created third party interest nor parted with possession and the applicant will hereafter neither create third party interest nor part with possession. She assures that within two weeks from today, the applicant and all adult family members residing in the suit premises will file usual undertaking in this Court, after giving advance copy to other side, incorporating therein:

(i) that they are in possession of the suit premises and nobody else is in possession;

(ii) that they have neither created any third party interest nor parted with possession;

(iii) that they will hereafter neither create third party interests nor part with possession;

(iv) that they will pay arrears of rent, if any, within two weeks from today;

(v) that they will not apply for further extension of time;

(vi) that they will not create third party interest.

21. In view thereof, notwithstanding dismissal of Civil Revision Applications, this order shall remain stayed for a period of twelve weeks from today subject to the applicant and all adult family members residing in the suit premises filing undertaking in the aforesaid terms within two weeks from today and serving copy in advance to other side. It is made clear that if the undertaking in the aforesaid terms is not filed and arrears are not paid within two weeks from today, the interim order shall stand vacated.

22. List the Applications for reporting compliance after three weeks.

(R.G.KETKAR, J.)