

IN THE HIGH COURT OF JUDICATURE AT MUMBAI  
CIVIL APPELLATE JURISDICTION  
CIVIL REVISION APPLICATION NO.710 OF 2015

Krishnakumar Manoharlal Obhan (decd) and another ... Applicants  
Vs.  
M/s. V. D. Keny & Brothers by Pandharinath  
Damodar Keny ... Respondents

Mr. Sandeep Ashok Bhagwat a/w. Mr. Sandeep S. Kumbhar for Applicants.  
Mr. Prabhakar K. Shetty for Respondent.

**CORAM : R. G. KETKAR, J.**  
**DATE : JUNE 09, 2016**

**P.C. :**

Heard Mr. Bhagwat, learned Counsel for applicants and  
Mr. Shetty, learned Counsel for respondents at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicants have challenged the judgment and decree dated 05.01.2009 passed by the learned Judge presiding over Court Room No.20 of the Court of Small Causes at Bombay in R.A.E.& R. Suit No.632/1154 of 1999 as also the judgment and decree dated 28.08.2015 passed by the Appellate Bench of the Small Causes Court in Appeal No.94 of 2009. By these orders, the Courts below decreed the Suit on the ground of non payment of arrears of rent and permitted increases as per Section 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Act').

3. Respondents, hereinafter referred to as plaintiffs, have instituted Suit through Pandharinath Damodar Keny described as Manager of M/s. V. D. Keny & Brothers. Mr. Bhagwat strenuously contended that Pandharinath Damodar Keny being the Manager of M/s. V. D. Keny &

Brothers had no authority to institute the Suit. He had no locus to maintain the Suit. He submitted that in cross-examination, P.W.1 Pandharinath admitted that M/s. V. D. Keny firm is not in existence from the year 1957. He further admitted that he does not have the documentary evidence to show that he was or is Manager of M/s. V. D. Keny & Brothers. He submitted that Suit could have been instituted either by one of the co-owners or by the rent collector. In any case, Manager does not have any authority to institute the Suit under the Act. He has taken me through the pleadings and oral evidence. He, therefore, submitted that as the Suit itself was wholly misconceived and was not maintainable at the instance of Pandharinath who had instituted the Suit in his capacity as Manager of M/s. V. D. Keny & Brothers, the Courts below ought to have dismissed the Suit.

4. On the other hand, Mr. Shetty supported the impugned orders. He invited my attention to the rent receipt dated 19.09.1998 at exhibit-28 whereunder defendants had paid rent for the month of April to June 1998 to Pandharinath Keny. He submitted that from July, 1998 onwards, defendants did not pay rent. The demand notice was issued on 21.04.1999 at exhibit-25. The same was replied on 01.09.1999 at exhibit-54. Under this reply, defendants remitted rent at the rate of Rs.150/- per month as against monthly rent of Rs.294.35 ps./- He also invited my attention to the findings recorded by the Courts below and in particular appellate Court dealing with the issue of non-payment of rent. He submitted that the Courts below have concurrently held that Pandharinath was one of the owners as also was collecting rent from the defendants. He, therefore, submitted that no case is made out for invocation of powers under Section 115 of C.P.C.

5. 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 Suit is decreed under Section 12 of the Act. During the course of the arguments, Mr. Bhagwat was not in a position to demonstrate that the findings recorded by the Courts below are contrary to the evidence on record. Even otherwise, perusal of paragraph 29 of the appellate Court's judgment shows that defendants did not comply the orders dated 18.10.2001 and 23.07.2007. By order dated 18.10.2001, the learned trial Judge decided the application dated 27.02.2001 made by the defendants for permission to deposit the arrears of rent. The application was allowed on 18.10.2001. Mr. Bhagwat was not in a position to show that the defendants complied the said order. That apart, on 07.03.2007, plaintiffs took out application for striking out the defence of the defendants. That application was allowed on 23.07.2007 directing the defendants to pay the arrears of rent to the plaintiffs within a period of four weeks from the date of the order. Mr. Bhagwat was not in a position to demonstrate that the defendants had made the payment as per that order. In view thereof, it has to be concluded that plaintiffs have established the ground of non-payment of rent under Section 12 of the Act.

6. The main contention advanced by Mr. Bhagwat was that on behalf of M/s. V. D. Keny and Brothers, Pandharinath Damodar Keny had instituted Suit in his capacity as Manager. He had no authority to institute the Suit. I do not find any merit in this submission for more than one reason. Perusal of the evidence of Pandharinath and in particular paragraph 2 shows that the building where the suit premises is situate is owned by three brothers, namely, (1) Vasudev Damodar Keny, (2) Narayan Damodar Keny and (3) Pandharinath Damodar Keny. He further deposed that his elder brother died on 02.07.1992. The other brother Narayan died on 27.12.2003. Thus, after the death of his

brothers, Pandharinath was looking after the building. It is in that context, one has to consider the description of Pandharinath suing defendants in his capacity of Manager of M/s. V. D. Keny and Brothers. It is equally true that in cross-examination, Pandharinath admitted that M/s. V. D. Keny firm is not in existence from the year 1957 and that he did not have the documentary evidence to show that he was or is Manager of M/s. V. D. Keny & Brothers. However, the fact remains that being one of the owners of the building where the suit premises is situate, it cannot be said that Pandharinath had lacked inherent authority to institute the Suit. That apart, in the course of evidence, it has come on record that defendants were paying rent to Pandharinath. Section 5(3) of the Act defines the expression “landlord”, which reads thus,

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

(3) “landlord” means any person who is for the time being, receiving, or entitled to receive, rent in respect of any premises whether on his own account or on account, or on behalf, or for the benefit of any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant; and includes any person not being a tenant who from time to time derives title under a landlord; and further includes in respect of his sub-tenant, a tenant who has sublet any premises; and also includes in respect of a licensee deemed to be a tenant by section 15A, licensor who has given such license, and in respect of the State Government, or as the case may be, the Government allottee referred to in sub-clause (b) of clause (1A), deemed to be a tenant by section 15B, the person who was entitled to receive the rent if the premises were let to a tenant immediately before the coming into force of Bombay Rents, Hotel and Lodging House Rates Control Bombay Land Requisition and Bombay Government Premises (Eviction) (Amendment) Act, 1996.”

7. Perusal of the definition of 'landlord' extracted hereinabove clearly shows that Pandharinath being the owner as also collecting rent from the defendants was perfectly justified and was competent to maintain the Suit. The Courts below, after considering the material on record, concurrently held that Pandharinath had authority to institute the

Suit and that defendants have not complied the requirements of Section 12 of the Act and are in arrears of rent. No other contention was advanced. Defendants were not in a position to demonstrate that they had complied the requirements of Section 12 as also they had paid arrears of rent. Defendants were not in a position to show that the findings recorded by the Courts below are perverse being based on no evidence on record. Defendants were also not in a position to demonstrate that no reasonable / prudent person would have reached the conclusions arrived at by the Courts below. Hence, no case is made out for invocation of powers under Section 115 of C.P.C. Application fails and the same is dismissed.

**(R. G. KETKAR, J.)**

*Minal Parab*