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

CIVIL REVN. APPLICATION NO. 777 OF 2015

M/s. Sankalp Fabrics.

... Applicant.

V/s.

Chhotalal Bhuvan Co-operative
Housing Society Ltd.

... Respondent.

Mr. S.K. Chaturvedi i/b. M/s. Chaturvedi & Assoc. for the
Applicant.

Mr. Kaushal Tanhare a/w. P.J. Gada and Rushikesh Salkar i/b.
Dhanuka & Partners for the Respondent.

CORAM : N.M. Jamdar, J.

26 September, 2016.

Oral Order :-

By this Revision Application, the applicant challenges the order passed by the learned City Civil Court Judge rejecting the Notice of Motion No. 4147 of 2014 in Short Cause Suit No. 721 of 2014, the Applicant had taken out said Notice of Motion under Order 7 Rule 11 of the Code of Civil Procedure.

2. The Suit has been filed by the Respondent – Plaintiff seeking declaration that the Applicant is a tress-passer and for

mandatory injunction directing the Applicant to remove himself from the suit premises and for further reliefs. In this Suit, a Notice of Motion has been taken out as above which has been rejected by the impugned order.

3. The learned Counsel for the Applicant firstly submitted that the Suit is not maintainable in view of the fact that the tenancy has been created in favour of the Applicant and the Suit must be filed in the Small Cause Court. The learned Counsel for the Applicant relying on Section 78 of the Maharashtra Co-operative Societies Act, 1960, submitted that the actions of the Administrator are binding on the society and the suit has been filed in the year 2014 when receipts were executed in the year 1997. It is the case of the Applicant that all these documents, which are unquestioned, clearly shows that there is a tenancy created in favour of the Applicant and merely labeling the Applicant as a tress-passer, jurisdiction of the Civil Court cannot be invoked.

4. In the impugned order the learned City Civil Court Judge has rightly gone by the averments in the plaint and not by the defence of the Applicant. It is case of the Respondent – Plaintiff that though certain receipts were executed in favour of the Applicant by the First Administrator some time in the year 1997, the Administrator was not authorized to do so and the Respondent –

Society never accepted the applicant as a tenant and that there was a fraud played on the Respondent – Plaintiff Society. The case pleaded by the Respondent – Plaintiff cannot be stated to be an impossible case. There have been two Administrators appointed and a receipt is stated to be executed by the Administrator and not by the Respondent – Plaintiff Society. What is the effect of the actions of the Administrator and what is the evidentiary value of all the documents relied upon by the Respondent – Plaintiff and so also the contention of the Applicant on those documents, is a matter of trial. This issue cannot be decided at this stage and will be decided after the evidence is led by the parties. This approach of the learned City Civil Court Judge cannot be stated as without jurisdiction so as to to warrant interference.

5. Second ground that is urged by the learned Counsel for the Applicant is that the receipt was executed in the year 1997 and the Suit has been filed in the year 2014. The prayers made by the Respondent – Plaintiff in the plaint are for eviction. Whether the relief sought for by the Respondent – Plaintiff should not be granted in view of passage of time and the alleged acquiescence on their part is a matter of trial and therefore this issue also will have to be decided after the evidence is led between the parties.

6. The learned Counsel for the Applicant then submitted that the dispute in the Co-operative Court is between the Society and its members and therefore, the jurisdiction of the Civil Court is decided. Firstly as pointed out by the learned Counsel for the Respondent – Plaintiff, the reference to the dispute is the defence of the Applicant. Furthermore, the dispute was filed calling upon the occupants to vacate to enable the Society to carry out the repairs, therefore, the present issue did not arise for consideration. Even otherwise, I am not inclined to conclude the issue and leave the same for adjudication at the time of trial.

7. It was then urged that the Respondent – Plaintiff is seeking to proceed against the Applicant without joining M/s. Onkarmal & Co., the original tenant. The Respondent – Plaintiff has averred that M/s. Rajgopal Rathi is the original tenant, and as far as the Applicants are concerned, a reference is made to M/s. Onkarmal & Co. Even otherwise question whether the Applicant can be termed as a tenant or otherwise, as observed above, will have to be decided after the evidence is led. Therefore, this issue being connected with the first issue, will also have to be left open.

8. To conclude therefore, on the basis of the allegations made by the Applicant, the plaint cannot be rejected at the threshold and the issue raised will require trial as correctly held by the

learned City Civil Court Judge. There is no jurisdictional error. The observations made in the impugned order as well as the present order will have to be treated as prima-facie. The Revision Application is accordingly dismissed.

(N.M. Jamdar, J.)