

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 1044/2014

IN

APPEAL NO.559/2009

IN

RAR & r SUIT NO.580/998/2001

Pravin Allahmurad Khusnami & Anr.

... Applicants

V/s.

Morarji Hariram & Ors.

... Respondents

Mr. Pradip R. Kadam for the Applicants

Mr. Neel Girish helekar for the Respondents.

CORAM: K.K. TATED, J.

DATED : APRIL 2, 2016

PC. :

1. Heard the learned counsel for the parties. By consent of the parties, the matter is taken up for final hearing at the stage of admission itself.

2. By this Civil Revision Application defendant Nos.1 and 2 challenge the concurrent findings of fact recorded by both the courts below.

3. In the present proceedings, the respondent plaintiff filed RAE & R Suit No.580/998/2001 in the Court of Small Causes Mumbai against the defendant for vacant and peaceful possession of the suit premises i.e. shop No.8/B, situated at Kokchi House, 17, Brahmanwada Road, Matunga, Mumbai and decree for arrears of rent and mesne profits. The plaintiff filed suit for eviction on the ground that defendant Nos.1

and 2 were in arrears of rent in respect of the suit premises for the period from 01.04.1996 to 31.08.2000 amounting to Rs.27,772/-. In spite of notice dated 08.09.2000, defendant Nos.1 and 2 failed and neglected to pay arrears of rent to the plaintiff within statutory period of 90 days from the date of service of demand notice. The plaintiff also pleaded that the defendant Nos.1 and 2 have carried out permanent cement built structure in front of the suit premises. The defendant also breached the terms and conditions of tenancy agreement. The plaintiff also pleaded in the plaint that defendant Nos.1 and 2 have sublet and assigned and/or transferred the interest in the suit premises to third party without consent in writing from the plaintiff. The plaintiff also pleaded in the plaint that the plaintiff is in need of the suit premises for his use and occupation. The plaintiff has two sons who are now major and they have no place of business. The plaintiff intends to shift one of his son to Mumbai permanently since the plaintiff has no other place of business in Calcutta. Hence, the plaintiff is in need of the suit premises for his own use and occupation.

4. The defendant Nos.1 and 2 filed written statement dated 03.11.2003 and denied the allegations and grounds made by the plaintiff in suit for eviction. The defendant Nos.1 and 2 submitted in the written statement that by virtue of tenancy agreement dated 18.04.1996 they were in possession of the suit premises on contractual rent of Rs.400/- pm and they have not committed any breach of the terms and conditions of the tenancy agreement dated 18.04.1996. Hence, there is no question of passing any eviction order against them.

5. The trial court, considering the pleadings of both the sides, framed following issues:

	ISSUES	FINDINGS
1	Whether the defendant Nos.1 and 2 are in arrears of rent from 01.04.1996 ?	In the negative
2	Whether the defendant Nos.1 and 2 failed and neglected to pay the arrears of rent in spite of demand made in notice dated 08.09.2000 ?	In the affirmative.
3	Whether the defendant Nos.1 and 2 have committed breach of terms of tenancy ?	In the affirmative
4	Whether the defendant Nos.1 and 2 have sublet and/or assigned or transferred suit premises ?	In the affirmative
5	Whether the defendant Nos.1 and 2 are profiteering ?	In the affirmative
6	Whether need of the plaintiff in respect of the suit premises is reasonable and bona fide ?	In the negative
7	To whom greater hardship will be caused by passing the decree than by refusing to pass it ?	Does not survive
8	Whether the plaintiff is entitled to recover possession of suit premises /	In the affirmative
9	What is due to plaintiff ?	Rent from September 2008 to August 2009 with interest @ 15%
10	Whether plaintiff is entitled to mesne profit ?	Accordingly
11	What order and decree ?	As per final order

6. After considering the evidence on record, the trial court held that defendant Nos.1 and 2 were in arrears of rent from 01.04.1996 and they failed and neglected to pay the same within stipulated time as

per demand notice dated 10.09.2000. The trial court also held that defendant Nos.1 and 2 have sublet, assigned and transferred the suit premises to third party. The trial court recorded that the plaintiff is in need of the suit property for their personal use and occupation. The trial court, by judgment and decree dated 26.08.2009 directed defendant Nos.1 and 2 to handover vacant and peaceful possession of the suit premises to the plaintiff and also pay arrears of rent.

7. Being aggrieved by the judgment and decree passed by the trial court, defendant Nos.1 and 2 preferred appeal No.559/2009 before the Appellate Bench of the Small Causes Court, Mumbai. The appellate bench framed following points for consideration:

	ISSUES	FINDINGS
1	Whether the plaintiff prove that the defendant Nos.1 and 2 were in arrears of rent for the period 01.04.1996 upto 31.08.2000 ?	In the affirmative
2	Whether the plaintiff prove that despite statutory notice under section 15(2) of the Maharashtra Rent Control Act 1999 the defendant No.1 and 2 failed to comply the demand of arrears ?	In the affirmative
3	Whether the plaintiff prove that, the defendants have committed breach of tenancy agreement ?	In the affirmative
4	Whether the plaintiff prove that the defendant Nos.1 and 2 without permission in writing of the plaintiff unlawfully sublet the suit premises ?	In the affirmative
5	Whether the plaintiff is entitled for vacant and peaceful possession of the suit premises and arrears of rent ?	In the affirmative

6	Whether the impugned judgment and decree needs interference ?	In the negative
7	What order ?	Appeal is dismissed

8. After hearing both sides, the Appellate Bench of the Small Causes Court, Mumbai dismissed the appeal by judgment and decree dated 26.09.2014. Hence, the Civil Revision Application.

9. The learned counsel for the defendant Nos.1 and 2 submits that both the courts below failed to consider the evidence on record properly. Hence, same deserves to be set aside. He submits that both the courts below failed to consider the fact that defendant Nos.1 and 2 were ready and willing to pay rent of the suit premises but the trial court failed to pass an order to that effect. He submits that both the courts erred in coming to the conclusion that defendant Nos.1 and 2 carried out alteration in the suit premises without obtaining any permission from the landlord. He submits that defendant Nos.1 and 2 carried out the construction not in the suit premises but in open space appertenant to the suit premises. Hence, that cannot be considered as an alteration and/or construction in suit premises. He submits that both the courts below failed to consider the fact that the respondent plaintiff failed to show *bona fide* requirement of the suit premises. He submits that in the interest of justice, this Hon'ble Court be pleased to set aside the judgment and decree passed by both the courts below holding that the plaintiff failed to make out a case for evicting defendant Nos.1 and 2 from the suit premises.

10. On the other hand, the learned counsel for the respondent

plaintiff vehemently opposed the Civil Revision Application. He submits that there are concurrent findings of fact recorded by both the courts below on the point of arrears of rent, alteration/addition and *bona fide* requirement of the plaintiff. He submits that if there are concurrent findings of fact recorded by both the courts below and if the applicant fails to show any irregularity in the impugned order, then the court should not interfere with those orders under Article 227 of the Constitution of India. He submits that the applicant's sons intend to carry out their own business separately. Both the courts below considered these facts and held that the plaintiff has made out a case of *bona fide* requirement. He submits that considering the evidence on record and the findings of both the courts below, there is no substance in the Civil Revision Application and same be dismissed with costs.

11. Heard both sides, gone through a copy of the plaint, written statement of the defendant and relevant documents on record.

12. It is to be noted that there are concurrent findings of fact are recorded by the courts below. The Apex Court in the matter of ***V.Sumatiben Maganlal Manani (dead) by L.Rs. Vs. Uttamchand Kashiprasad Shah and Anr. 2011 (6) MLJ 1*** held that the High Court, in exercise of its revisional jurisdiction, should not interfere with the findings of facts properly arrived at by the courts below. In the matter of ***Sarla Ahuja Vs. United India Insurance Co. Ltd. AIR 1999 SC 100*** the Apex Court held that it is not permissible to the High Court to reappraise and re-appreciate the evidence for reaching a different finding in revisional jurisdiction. In the matter of ***Sunilkumar and Anr. Vs. Anilkumar 2008 (9) SCC 241*** the Apex Court held that

normally, the High Court should not interfere with the concurrent findings of fact in Rent Act matters unless and until the orders passed by the courts below are perverse and contrary to law.

13. In the present proceedings, the issue involved is; “whether the plaintiff has made out a case of *bona fide* requirement of the suit premises?” This Court, in the matter of ***Sara Rauf and Anr. Vs. Durgashankar Ganeshlal Shroff 2007 (4) MLJ 129*** held that the landlord is a best judge of his essential requirements. He has complete freedom in the matter. It is no concern of the courts to dictate to the landlord, how, and in what manner he should live or to prescribe for him the residential standard of their own. There is no law which deprives the landlord of the benefits of his enjoyment of his property. In the matter of ***Kalpesh Hemantbhai Shah Vs. Manhar Auto Stores through its partners & ors. 2014 SAR (Civil) 647*** it is held that the High Court, under Article 227 of the Constitution of India has jurisdiction to correct the error, if apparent on the face of record but in absence of any question of law involved in the case, the High Court cannot alter such finding under Article 227 of the Constitution of India. Comparative hardship of tenant and landlord is a question of fact. In absence of any question of law involved with such fact, the High Court cannot alter such findings under Articles 226 and 227 of Constitution of India.

14. In the present proceedings, though defendant Nos.1 and 2 filed written statement before the trial court, they avoided to enter into witness box. On their behalf, one Mr. Sanjay Mayekar, their power of attorney holder entered into witness box to support the defendants'

case. In his deposition, he has specifically admitted that he does not know about the suit premises. Apart from that he admitted in his deposition that defendant Nos.1 and 2 carried out the construction as alleged in the plaint without obtaining any permission either from the landlord and/or competent authority. He further admitted in his deposition that he does not have any knowledge whether the arrears of rent were paid within 90 days from the date of receipt of demand notice from the plaintiff. Bare reading of deposition of the defendant's witness shows that he had no knowledge about the suit premises at all. Though the defendant in written statement raised several objections, those were not proved before the courts below. On this ground also, the Civil Revision Application is liable to be dismissed with costs.

15. The plaintiff proved the fact that defendant carried out unauthorised construction without obtaining their permission. The plaintiff also proved that in spite of demand notice duly served on the defendant, they failed and neglected to clear the dues within 90 days from the date of receipt of demand notice. These facts were considered by both the courts below. During the course of arguments, the advocate for the defendant has not shown any irregularity committed by both the courts below at the time of deciding the matter against them.

16. Hence, the Civil Revision Application stands dismissed. No order as to costs.

(K.K. TATED, J.)