

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

WRIT PETITION NO. 8292 OF 2016

**(CONVERTED FROM CIVIL REVISION APPLICATION NO.1060
OF 2014)**

Shekhar Hegde, since deceased, ..Applicants
through Legal Representatives
1. Smt. Pushpa S. Hegde and
Ors.

Vs

Ramdas Dagadoba Ganjve and
Anr. .. Respondents

Mr. Rajesh S. Datar, Advocate for Applicants.

Mr. Vinamra K. Pariha i/b. Mr. Sanjay Jadhav, Advocate for
Respondent no.1.

CORAM : R.G.KETKAR,J.
DATE : 11/07/2016

PC:

1. Heard Mr. Rajesh Datar, learned counsel for the applicants and Mr. Vinamra Pariha, learned counsel for respondent no.1 at length.
2. In view of Section 7 of C.P.C., leave to convert this Revision Application into Writ Petition is granted. Amendment shall be carried out on or before 14.7.2016 and amended slip shall be made over to other side.
3. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicants, hereinafter

referred to as heirs of defendant no.2, have challenged the Judgment and decree dated 3.3.2007 passed by the learned Judge, Small Causes Court, Pune, in Civil Suit No.115 of 1998 as also the Judgment and decree dated 18.8.2014 passed by the learned Ad-hoc District Judge-5, Pune in Civil Appeal No.628 of 2010. By these orders, the Courts below decreed the suit instituted by respondent no.1, hereinafter referred to as 'plaintiff', under sections 12, 13 (1)(e), 13(1)(k) and 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, 'Act').

4. Mr. Datar strenuously contended that the Courts below committed serious error in passing decree under section 13(1)(e) of the Act. He submitted that original defendant no.1 was carrying on business of hotel and lodging. By registered instrument dated 28.10.1999, defendant no.1 had assigned tenancy rights along with stock-in-trade and goodwill in favour of defendant no.2. Defendant no.2 is also carrying the same business. He, therefore, submitted that the Courts below were not justified in passing the decree on the ground of unlawful subletting as contemplated by section 13(1)(e) of the Act.

5. As far as other grounds of eviction are concerned, he made feeble attempt to contend that the Courts below were not justified in passing the decree. Perusal of the impugned orders

shows that the Courts below after appreciating the evidence on record, have concurrently decreed the suit under sections 12, 13(1)(g), and 13 (1)(k) of the Act. In view thereof, I do not find any merit in the submissions of Mr. Datar in so far as these grounds are concerned.

6. As far as ground of unlawful subletting under section 13(1) (e) of the Act is concerned, it is not in dispute that the suit was instituted on 9.3.1998. It is only thereafter registered instrument was executed by defendant no.1 in favour of defendant no.2 on 28.10.1999. In other words, assignment was not made prior to filing of the suit. The learned trial Judge has considered this aspect from paragraphs 13 and 14. As far as the District Court is concerned, the learned District Judge has considered this aspect in paragraphs 10 to 18. After considering the material on record, the learned district Judge upheld the findings recorded by the learned trial Judge and observed that during the pendency of the suit, defendant no.1 executed deed of assignment in favour of defendant no.2 on 28.10.1999.

7. In view thereof, I do not find that the courts below committed any error in decreeing the suit under section 13(1)(e) of the Act. Applicants were not in a position to demonstrate that the findings recorded by the Courts below are based on no evidence or that they are contrary to evidence on record. They

were also not in a position to demonstrate that no reasonable or prudent person would have reached the conclusions arrived at by the Courts below. No case for invocation of powers under Section 115 is made out. Hence, Petition fails and the same is dismissed.

8. At this stage, Mr. Datar orally applies for stay of this order for a period of eight weeks from today. He assures that the applicants/legal representatives of defendant no.2 are in possession of the suit premises. They have neither created third party interest nor parted with possession and that they will hereafter neither create third party interest nor part with possession and that they have paid rent upto date and are not in arrears.

9. Mr. Datar assures that within two weeks from today, L.Rs of defendant no.2 and all adult family members using 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 clear arrears of rent, if any, within 2 weeks from today;

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

(vi) that in case they are unable to obtain suitable orders from higher Court within 8 weeks from today, they will vacate and hand over vacant and peaceful possession of the suit premises to the respondents.

10. Hence, subject to the applicants giving undertaking in the aforesaid terms and serving copy in advance to other side, notwithstanding dismissal of Petition, this order shall remain stayed for a period of eight weeks from today. It is made clear that if within two weeks from today the undertaking in the aforesaid terms is not filed as also arrears, if any, are not cleared, the interim order shall stand vacated without further reference to the Court.

11. List the Petition for reporting compliance after three weeks.

(R.G.KETKAR, J.)