

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

CIVIL REVISION APPLICATION NO.882 OF 2013

Mr. Angelo Alosis @ Domnic Pareriya .. Applicant

Versus

Mr. Shankar Ramnathso Bakale .. Respondent

Mr. S. S. Hardikar, for the Applicant.

CORAM : R.M. SAVANT, J.

DATE : 23rd FEBRUARY 2016

PC.

1. The revisionary jurisdiction of this Court is invoked against the order dated 20.07.2013 passed by the Lower Appellate Court i.e. the Learned District Judge-12, Pune, by which order, the Appeal filed by the Petitioner being Civil Appeal No.50 of 2008 came to be dismissed and resultantly, the decree of dismissal passed by the Trial Court dated 13.12.2007 in RCS No.606 of 2002 came to be confirmed.

2. The Applicant herein is the original Plaintiff in the suit in question being RCS Suit No.606 of 2002. The suit was filed for possession of the suit premises and recovery of arrears of licence fees. The suit was founded on the fact that a licence was created in favour of the Respondent herein by agreement dated 05.12.1997 for the period 05.12.1997 to

04.11.1998 and the licence fees fixed were Rs.500/- for the licence period and Rs.1000/- to be payable if the Respondent did not vacate the premises. The Plaintiff terminated the licence of the Defendant by issuing notice dated 06.10.1998. It seems that in reply to the said notice dated 06.10.1998 the Defendant had contended that he had filed an application under the Bombay Rent Act on 18.11.1998. It seems that the said application came to be dismissed for non-prosecution and thereafter the Defendant filed another application under Section 29 of the Maharashtra Rent Control Act, 1999, on 26.05.2000 as by then the said 1999 Act had come into force. It was further the case of the Plaintiff that the Defendant has encroached upon the eastern portion of the suit premises owned by the Plaintiff on the ground floor in respect of which a private complaint was filed before the JMFC Court, Pune. It was further averred that the Defendant has started a canteen in the suit premises without the consent of the Plaintiff. Incidentally, it was averred that the Plaintiff reasonably and bonafide required the suit premises for his own occupation that the Defendant is not at all using the premises since last six months prior to the filing of the suit and that the Defendant has failed to pay the licence fees in respect of which the arrears are to the extent of Rs.47,500/-.

3. The Defendant filed his written statement. He accepted the fact that an agreement of licence was entered into with the Plaintiff on

05.12.1997. It was the case of the Defendant that there are seven owners of the entire suit property being House No.1403/A, Bhumipura, Pune and the Plaintiff is one of them. It was the case of the Defendant that one co-owner Mrs. Esmelda Pareriya had let out the entire ground floor of House No.1403/A, Bhumipura, Pune to the Defendant by a separate agreement. It was therefore the case of the Defendant that he is monthly tenant of Mrs. Esmelda Pareriya. It was the case of the Defendant that Mrs. Esmelda Pareriya and Miss. Edith Maud Pareira have executed tenancy agreement in favour of the Defendant and thereby let out six rooms situated on the ground floor of the House No.1403/A, Bhumipura, Pune on 03.06.2002. It was the case of the Defendant that monthly rent in respect of the premises is Rs.1,500/- and that he is running business in the suit premises in the name and style of "Samarth Cutpiece Centre".

4. In the suit as many as six issues were framed on the basis of the pleadings which were on record. The said issues were to the effect as to whether the description of the suit premises is correct, does the Plaintiff prove that he reasonably and bonafide requires the suit premises for his own occupation, whether the Plaintiff would suffer greater hardship if the decree is not passed, whether the Plaintiff proves that the Defendant is in arrears of rent, whether the Plaintiff is entitled to recover possession and arrears of rent from the Defendant as also whether the Plaintiff proves that

the Defendant is not using the suit premises for a period of six months prior to the filing of the suit. The Trial Court answered all the issues against the Plaintiff, except the issue in respect of the description of the suit premises. In respect of the said issue, the Trial Court has given finding that the description of the suit premises in the plaint is proper. The Trial Court as indicated above has recorded a finding of fact on the basis of the material on record in respect of all the issues namely, bonafide requirement, arrears of rent, hardship etc. The Trial Court accordingly by judgment and order dated 13.12.2007 dismissed the suit by directing the Plaintiff do pay cost to the Defendant.

5. Aggrieved Plaintiff carried the matter in Appeal being Civil Appeal No.50 of 2008. In the Appeal, it seems that a ground was raised that the proper issues were not framed by the Trial Court arising out of the pleadings and were not properly decided. However, the Appellate Court framed following issues, which were in terms of the issues framed by the Trial Court. The same are reproduced hereinunder for the sake of ready reference :-

“1) Does the plaintiff prove that he reasonably and bonafidely requires the premises for his own use and occupation ?

2) Does the Plaintiff prove that defendant is a defaulter

in payment of rent ?

3) To whom greater hardship would be caused, if decree is passed, than by refusing to pass it ?

4) Whether Judgment and decree passed by the learned trial Judge needs interference ?

5) What order ?

6. It seems that though the said ground was raised in the memo of Appeal, the same was not pursued at least from the issues that were framed by the Lower Appellate Court, one has to draw the said conclusion. It seems that the Applicant herein also did not file any application for correction of the issues framed by the Appellate Court or for the matter being remanded back to the Trial Court for framing of proper issues arising out of the pleadings. The Appellant i.e. the Applicant herein can therefore be said to be acquiesced with the issues framed by the Lower Appellate Court. The Lower Appellate Court accordingly proceeded to decide the said issues as framed, and on a re-appreciation of the material on record has answered each of the issues against the Applicant/ original Plaintiff and accordingly dismissed the Appeal by the impugned judgment and order dated 20.07.2013. The Trial Court as well as the Lower Appellate Court have recorded a finding that the Defendant was not a licensee but a tenant by virtue of the agreement executed by the said Mrs. Esmelda Pareriya and Miss. Edith Maud Pareira.

7. It was the submission of the Learned Counsel appearing for the Applicant Mr. S. S. Hardikar that the issues framed by the Trial Court were not the issues which can be said to be arising out of the pleadings of the parties as it was the case of the Plaintiff that the Defendant was a licensee whose licence has come to an end on account of its termination and possession was sought from him on the said basis. It was sought to be contended by Mr. S. S. Hardikar that the eviction was not sought on the ground of bonafide requirement or arrears of rent or non-user, as is now sought to be understood by the Courts below which is reflected in the framing of the said issues relating to the said aspects. It is therefore the submission of Mr. S. S. Hardikar that both the Courts below have proceeded on the basis of a case which was not the basis for seeking eviction of the Defendant.

8. In my view, it is not possible to accept the contentions of the Learned Counsel Mr. S. S. Hardikar. No doubt, a reading of the plaint discloses that the suit was principally founded on the case of termination of the licence which was granted to the Defendant, but it seems that incidentally a case of bonafide requirement, non-user, arrears of rent and licence fees was pleaded. It is having regard to the pleadings in respect of the said aspect that the Trial Court framed the issues covering the said grounds. Significantly, the Plaintiff did not question the framing of the said

issues and in fact condescended in framing of the said issues by leading evidence on the said issues. The matter further got compounded in the Appellate Court as though in the grounds an Appeal it was contended that proper issues based on pleadings have not been framed. The said contention was not pursued and the Plaintiff can be said to have acquiesced in the issues framed by the Lower Appellate Court which have already been referred to in the earlier part of this Court. Hence, the Plaintiff having proceeded on the basis of the issues framed and the Courts below having adjudicated the suit on the said basis, the clock cannot be turned back at the behest of the Plaintiff at this point of time when a period of 14 years has elapsed since the filing of the suit. In the light of the concurrent orders passed by the Courts below i.e. dismissing the suit and the Lower Appellate Court confirming the dismissal, the exercise of revisionary jurisdiction by this Court is not warranted. The Civil Revision Application is accordingly dismissed.

[R.M. SAVANT, J]