

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.281 OF 2013

Krishna Narayan Shetty

(Since deceased through legal heirs)

Smt. Janki Krishna Shetty and another

.. Applicants

Versus

Smt. Nathibai Damodar Thackersey

Women's University

.. Respondent

Mr. S. A. Rajeshirke, for the Applicants.

Mr. S. S. Patwardhan i/by Ms. A. K. Iyer & Ms. Y. R. Singh, for the Respondent.

CORAM : R.M. SAVANT, J.

DATE : 25th FEBRUARY 2016

PC.

1. The revisionary jurisdiction of this Court is invoked against the order dated 04.08.2012 passed by the Learned District Judge-1, Pune, by which order, the Appeal filed by the Applicants being Civil Appeal No.734 of 2008 came to be dismissed and resultantly, the dismissal of the suit in question by the Trial Court i.e. the Learned 6th Additional Judge, Small Causes Court, Pune, by judgment and order dated 22.08.2008 came to be confirmed.

2. The suit in question being Regular Civil Suit No.294 of 2001 was filed by the Applicant for declaration and injunction. The declaration sought was of tenancy in respect of the suit premises wherein a canteen is being conducted in the campus of the Respondent No.1 University at Pune. The Respondent No.1 University Shrimati Nathibai Damodar Thakersey University popularly known as SNDT is a Women's University having its college and premises at Karve Road within the precincts of the SNDT college campus and for catering to the need of the students, employees and staff members, facility by way of a canteen is provided. Initially an agreement came to be entered into for conducting the said canteen in the year 1979 between the SNDT and the Applicant herein. Pursuant to which the Applicant herein was granted possession of the premises. The said agreement for conducting the canteen is governed by the terms and conditions mentioned therein. It appears that infrastructure in the said canteen in the form of utensils, equipment, furniture, empty gas cylinder was provided by the SNDT. Some of the salient features of the said agreement were that the officials of the SNDT were entitled to check and supervise the premises for cleanliness, that the students were to be provided food at the rate fixed by the SNDT and that outsiders were not allowed to enter the canteen premises to avail of the services, the canteen was to be kept open between 8.00 a.m. and 6.30 p.m. everyday

except on Sundays and holidays when it was to be kept open between 3.00 p.m. and 5.00 p.m. It was the case of the Applicant/original Plaintiff that exclusive possession was handed over of the premises, that for the amount paid as per the agreement, the receipts were issued for payment of rent of the premises in question. The Applicant had therefore sought a declaration that he is the tenant in respect of the premises wherein the canteen was run. The second relief sought was that a perpetual injunction be granted against the SNDT that it should not evict the Applicant without following the due process of law. The suit proceeded to trial and evidence was led on the basis of the issues that were framed. The Trial Court on the basis of the material on record came to a conclusion that the control of the premises being that of the SNDT which was reflected in the fact that the rates for the foods were fixed, entry for the canteen being regulated by the SNDT, the entitlement of the officials of the SNDT to check and supervise the canteen for its cleanliness etc. and the fact that the Applicant was not entitled to entertain any outsiders, the canteen to be kept open for fixed hours, the Trial Court came to a conclusion that the essential ingredients of tenancy of being in exclusive possession and having control over the premises was not satisfied in the instant case and that the agreements entered into between the Applicant and SNDT were Leave and Licence Agreements. Having answered the said issue against the Applicants, the

Trial Court held that the second relief sought by the Applicants of perpetual injunction of restraining the SNTD from evicting without following the due process of law could not be granted. The Trial Court accordingly by judgment and order dated 22.08.2008 has dismissed the suit.

3. The aggrieved Plaintiff carried the matter in Appeal by way of Civil Appeal No.734 of 2008. The Lower Appellate Court on a re-appreciation of the material on record reiterated the findings of the Trial Court on the aspect of whether the Plaintiff was inducted as a tenant in the suit property. The Lower Appellate Court adverted to the circumstances on the basis of which the Trial Court had come to a conclusion that there was no exclusivity of possession of the Applicant in respect of the suit premises. The Lower Appellate Court accordingly has by the impugned judgment and order dated 04.08.2012 dismissed the Appeal.

4. The Learned Counsel for the Applicant sought to urge the contentions which were raised on behalf of the Applicant before the Courts below, namely that since there was exclusivity of possession of the Applicant, the Applicant had proved that he is a tenant and that the Courts below had erred in rejecting the second relief of perpetual injunction. In

my view, it is not possible to accept the said contentions urged by the Learned Counsel for the Applicant. As indicated above, both the Courts below have concurrently recorded findings of fact on the issues which arose before them relating to the claim of tenancy by the Applicant, the entitlement of the Applicant to the second relief can be said to be contingent upon the grant of the first relief. The first relief of declaration of tenancy being not granted, the second relief obviously could not be granted to the Applicant. In my view, therefore, there is no error of jurisdiction or any other illegality or infirmity for this Court to interfere in its revisionary jurisdiction. The Civil Revision Application is accordingly dismissed.

[R.M. SAVANT, J]