

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

CIVIL REVISION APPLICATION NO.763 OF 2015

Rajjabali Compound Resident Welfare

Association and others

.. Applicants

Versus

Abdul Samed Mohammed Sarif and another

.. Respondents

Mr. Kunal Bhanage, for the Applicants.

Mr. S. P. Srivastava, for the Respondent No.1.

CORAM : R.M. SAVANT, J.

DATE : 9th FEBRUARY 2016

PC.

1. The above Civil Revision Application takes exception to the order dated 19.11.2015 passed by the Appellate Bench of the Small Causes Court, Mumbai, by which order, the Appeal filed by the Applicants being No.268 of 2014 came to be dismissed and resultantly, the order dated 19.04.2014 passed by the Learned Judge of the Small Causes Court allowing the obstructionist notice filed by the Plaintiffs/Decree Holders in RAE Suit No.939 of 2009 came to be confirmed. The Respondent No.1 herein claims to be the owner and landlord in respect of the premises being Room No.4 at Rajjabali wali Chawl No.7, Dharavi Main Road, T. Junction, Dharavi, Mumbai-400 017. The Respondent No.1 is the original

Plaintiff who had filed the suit in question for eviction of the Defendant one Mr. S. P. Tagaraj from the suit premises. It seems that the said suit proceeded ex-parte and decree of eviction came to be passed against the Defendant. The Plaintiff filed Execution Application No.357 of 2012, wherein possession warrant came to be issued by the Executing Court by order dated 16.05.2012. It is at the stage of the execution of the possession warrant that the Petitioners obstructed the execution and thereby resulted in the Plaintiff filing the Obstructionist Notice being No.853 of 2012 for removal of the said obstruction. In reply to the said obstructionist notice, the Petitioners who were the Opponents obstructed the execution of the decree inter-alia on three grounds, namely that they are in possession of the suit premises being inducted by the original Defendant by virtue of the affidavit dated 30.03.1993, secondly, the suit as filed was barred under Section 22 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (herein after referred to as the "Slum Act") and that the Plaintiff is not the owner in respect of the suit premises. In support of the ground that the suit is barred by Section 22 of the Slum Act, the Opponents sought to rely upon the information which they had sought under the Right to Information Act from the Dharavi Redevelopment Project, Slum Rehabilitation Authority which are the letters dated 08.07.2013, 07.02.2014 and the order dated

07.10.2005. The Trial Court considered each of the grounds on which the obstruction was sought to be raised on behalf of the Opponents. In so far as the first ground, namely that they were inducted by the original Defendant pursuant to the affidavit dated 30.03.1993 is concerned, the Trial Court rejected the said contention as the person who had executed the alleged affidavit in favour of the Opponent i.e. original Defendant was not examined. In so far as the second ground is concerned, namely that the suit is barred by Section 22 of the Slum Act, the Trial Court held that in the absence of any notification produced by the Opponent declaring the land in question on which the structure is situated over CTS No.348 as slum, the said objection could not be accepted and in so far as last contention is concerned, the Trial Court held that questioning the title of the original Plaintiff would not prove that the Opponents i.e. Obstructionists had any independent right over the suit premises. The Trial Court as indicated above has accordingly by its order dated 19.04.2014 made the Obstructionist Notice absolute and directed the Opponents to remove themselves from the suit premises.

2. The Opponents i.e. the Petitioners herein carried the matter by way of Appeal being No.268 of 2014. The Appellate Bench of the Small Causes Court reiterated the findings of the Trial Court in respect of the three grounds. The Appellate Court observed that neither the Executing

Court nor the Appellate Court can adjudicate upon the issue of ownership of the property as the jurisdiction of the Small Causes Court is limited to determining the rights and liabilities accruing out of the relationship of landlord and tenant. The Appellate Court further observed that by raising the issue of ownership the Opponents do not establish that they have any independent right in respect of the suit premises. In so far as the two other grounds are concerned, the Appellate Court observed that in absence of the Defendant who was the best witness in respect of the transaction entered into between the Opponents and the Defendant as also in the absence of any notification declaring the said CTS No.348 as slum, the ground raised on the touchstone of Section 22 of the Slum Act could not be accepted. The Appellate Bench of the Small Causes Court has accordingly by the impugned order dismissed the Appeal.

3. The Learned Counsel appearing on behalf of the Petitioners Shri. Kunal Bhange would seek to reiterate the submissions of the Petitioners before the Courts below. However, in so far as the ground of bar of Section 22 of the Slum Act is concerned, the Learned Counsel sought to buttress the said submission on the basis of the notice dated 30.01.2016 issued in the Times of India of the said date which notice has been issued by the Chief Executive Officer of the Dharavi Redevelopment Project calling for qualification-cum-request for proposal to redevelop

Dharavi. It is the submission of Shri. Kunal Bhanage that the said notice is a sequitur to declaration issued under Section 3 of the Slum Act and therefore, it would have to be held that the suit as filed by the original Plaintiff was barred by Section 22 of the Slum Act. The said notice dated 30.01.2016 has been permitted to be produced as and by way of additional evidence pursuant to the order passed today in Civil Application (Stamp) No.3961 of 2016 by this Court. However, in my view, the said notice does not aid the Petitioners or further their case. A reading of the said notice makes it clear that the redevelopment of Dharavi encompasses within itself the slum areas as also the non-slum areas. The said notice therefore cannot be made referable to any notification issued under Section 3 of the Slum Act. As indicated hereinabove, the Petitioners i.e. original Opponents during the course of evidence before the Executing Court as well as the Appellate Court have not produced any notification indicating that CTS No.348 have been declared as a slum. The Petitioners have also not been able to prove that they have any independent right in respect of the premises in question. In fact in their reply they have in terms stated that they are claiming through the original Defendant. If that be so, the Petitioners are equally bound by the decree which has been passed against the original Defendant.

4. Having heard the Learned Counsel for the parties and having

gone through the record, no case for exercise of revisionary jurisdiction of this Court is made out. The Civil Revision Application is accordingly dismissed.

5. At this stage, the Learned Counsel appearing for the Petitioners Mr. Kunal Bhanage on instructions of Applicant No.4 who is personally present in Court seeks time up to 31.03.2016 to vacate the premises in question. In the facts and circumstances of the case, the Petitioners are granted time up to 31.03.2016 to vacate the premises on the condition that they deposit the amount as directed by the Appellate Court by order dated 03.09.2014 at Rs.10,000/- per month from 01.12.2015 till date and thereafter also at the same rate up to 31.03.2016 in this Court within three weeks from date. In the event the amount is not deposited, the benefit of this order in so far as the remainder of the period is concerned, would not enure to the Petitioners. The Respondent No.1 would be entitled to make an application for withdrawal of the said amount. Put up for compliance after three weeks.

[R.M. SAVANT, J]