

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

**CIVIL APPLICATION NO.180 OF 2017
IN
CIVIL REVISION APPLICATION (ST) NO. 2234 OF 2017**

Bharat Bhura Aher ...Applicant
Versus
Rambhau Haribhau Marathe ...Respondent

Mr.Ravi Girish Shinde for the Applicant.

None present for the Respondent.

CORAM : M. S. SONAK, J.

DATE : 09th OCTOBER 2017

P.C.

1. There is delay of 78 days in instituting this Civil Revision Application. Normally, notice should have been issued to the respondents.

2. The learned counsel for the applicant however points out that the suit premises have been demolished during the pendency of the suit. He points out that such demolition was undertaken by the corporation. He points out that he is not aware of the address of the respondents.

3. The learned counsel for the applicant submits that only three grounds are raised in this Civil Revision Application, which are as follows :-

(a) Whether, post destruction of the building in which the suit premises were located, does the tenancy survive ?

(b) Whether, any relief of injunction would have been granted in favour of the respondent-tenant when, he has converted the user of the suit premises from residential to commercial ?

(c) Whether, any suit simplicitor for injunction was at all maintainable without seeking any relief of injunction of possession ?

4. In so far as the first question is concerned, the same stands answered against the applicant by decision of the Hon'ble Supreme Court in the case of *M/s.Shah Ratansi Khimji & Sons V/s. Proposed Kumbhar Sons Hotel P. Ltd. & Ors.*¹

1 AIR 2014 SCC 2895

5. In this case, admittedly, it is not the tenant himself who has allegedly pulled down the structure and the structure was pulled down by the corporation on the alleged ground that it is illegal. Since, the applicant, claims to be the owner of the structure, it is presumed that it is the applicant, who had undertaken the illegal, construction. The applicant, obviously, can take no advantage of his own wrongful action. In any case, the question of law, stand answered against the applicant.

6. On facts, the two Courts have held against the applicant. In exercise of revisional jurisdiction, there is no question of re-appreciation of the evidence on record. Besides, the learned counsel for the applicant himself points out that the Appeal Court has only granted declaration and not granted any injunction. The second question, therefore, does not arise for determination.

7. So far as the third question is concerned, again, it is hypothetical. On the date when, the respondent instituted the suit for declaration, the respondent was very much in possession of the suit premises. At that stage, there was no question of seeking any relief of restoration of possession. Secondly, relief of injunction, which is, consequential in nature was also applied for. There is

accordingly, no merit in the third submission as well.

8. Since, there is no merit in any of the the grounds raised by the Applicant, no useful purpose would be served in issuing notice to the respondents, whose address, the applicant is, in any case unaware. Even substituted service will be of no avail because, there is no merit in the case of the applicant.

9. In the aforesaid circumstances, the application seeking condonation of delay is dismissed. As a result, the Civil Revision Application also stands dismissed. There shall however be no order as to costs.

(M. S. SONAK, J.)