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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 361 OF 2017

Hussain Shariff s/o Kadar Shariff	...Applicant
<i>Versus</i>	
FM Chinoy & Co Pvt Ltd & Ors	...Respondents

Mr Ramgopal Tripathi, *i/b Vinod Shukla, for the Applicant.*
Mr Nasarali Rizvi, *i/b Dua Associates, for Respondent No. 1.*
Mr Manoj Dalyi, *for Respondents Nos. 2(a) to 2(d).*

CORAM: G.S. PATEL, J
DATED: 27th November 2017

PC:-

1. Heard.

2. The Civil Revision Application is directed against an order of 21st November 2016 dismissing the applicant's appeal. The applicant was the original plaintiff. He filed Suit No. 665/1023 of 2003. The 1st defendant to that suit was the owner and landlord. The 2nd defendant was the plaintiff's brother. The case of the plaintiff was that he was a tenant or at any rate a joint tenant of Flat No. 7 of about 2,500 sq ft with an appurtenant 400 sq ft terrace in a building, viz., Meher, at 16, Daddy Seth Road, Mumbai 400 007.

3. The trial court held against the plaintiff. The plaintiff's case was that the landlord rented the premises to him in 1972. He got married in 1973. His family includes two daughters and three sons, all of whom, according to him, were born in these premises. He also alleged that his brother-in-law was the director of the landlord company and he told him that the building was likely to be demolished and taken up for redevelopment. Relations with his elder brother, the 2nd defendant, were strained. The plaintiff, therefore, moved to a building in Bandra and later to Mira Road in 1989.

4. The plaintiff claimed that when he tried to re-enter the premises he was prevented. He was, therefore, constrained to file the present suit. The landlord resisted the suit saying there was no relationship of landlord and tenant between the 1st defendant and it was the 2nd defendant, the plaintiff's brother, who was the tenant. The claim of the original tenancy was also denied and it was pleaded that the plaintiff was temporarily using the premises as a gratuitous licensee until he made arrangements for his own residence. Having done so, he quit the premises and severed all connections with this premises. It was contended that the plaintiff had no nexus as a tenant with the premises.

5. The plaintiff claimed to have rent receipts in his name and that it was he who allowed the 2nd defendant, his brother to stay their free of costs.

6. The trial court framed issues, took evidence and ultimately decided against the plaintiff and dismissed the suit. In appeal, the Appellate Court framed five points for determination and answered all of them against the plaintiff including that the plaintiff had failed to prove that he was a tenant, that the suit was time-barred, and that the plaintiff was not entitled to the declaration that he sought.

7. While addressing the case before it, the Appeal Court carefully scrutinized the oral and documentary evidence. It looked at the documents adduced by the plaintiff. It noted important discrepancies even on dates of certain documents placed by the plaintiff to prove his case. There was, for instance, an income-tax document where the plaintiff's signature was of 2005 but the receipt in the Income-tax Department was shown to be of 10 years *earlier* of 15th May 1995. This was never explained by the plaintiff. The electricity meter from the BEST was apparently shown to be in the plaintiff's name since 1935 although it was the plaintiff's own case that he entered the tenancy only in 1972. Again this discrepancy remained unexplained and the Appellate Court correctly held that these documents did not inspire confidence, much less establish a tenancy. In contrast not a single rent receipt was produced.

8. Defendant No. 2 produced a voters' list from 1972 to 1977 and 1978 to 1985 which showed his address at the suit premises. The photocopy of the voters list produced by the plaintiff was disbelieved. More importantly the deceased 2nd defendant's wife produced the voters' list for many years and also showed rent receipts that demonstrated the 2nd defendant's nexus with the suit

premises. It is on this basis that the Appellate Authority held against the plaintiff.

9. It is not possible to find fault with the appellate order, especially in a revision proceeding under Section 115 of the Code of Civil Procedure 1908 and where no material infirmity, irregularity, jurisdictional error or perversity are demonstrated.

10. The Civil Revision Application is rejected. No costs.

(G. S. PATEL, J)