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

CIVIL REVISION APPLICATION NO. 101 OF 2015
WITH
CIVIL APPLICATION NO.155 OF 2015
IN
CIVIL REVISION APPLICATION NO. 101 OF 2015

Deviprasad Devraj Lohar & Anr. ...Applicants.

VS

M/s Dettinner Pvt. Ltd. & Ors. ...Respondents.

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Mr A.K.Saxena A/W Ms Pratima Singh for the Applicants.

Mr D.S.Sabnis a/w Mr Durgesh Kulkarni i/b Lex Firms for
Respondent No.1.

Mr Kailas Dubey for Respondent Nos.5A to 5E.

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CORAM : **B.P.COLABAWALLA, J.**
JUNE 14, 2017.

P.C. :

By this Civil Revision Application the Applicants who are the original Defendant Nos. 2(a) and 2(b) before the Trial Court in R.A.E.Suit No.2676 of 1990, have challenged the Judgment and Decrees dated 30th August, 2011 and 4th February, 2015 passed by the Trial Court and the Appellate Bench of the Small Causes Court, respectively.

2 It is the case of these Defendants that the Plaintiffs had filed the suit against Defendant Nos.1 and 2 for eviction on the ground of unlawful subletting. Defendant No.1 was the original tenant in respect of the suit premises on monthly rent of Rs.37/- including Rs.7/- being for electricity charges. It is the case of the Plaintiffs that Defendant No.1 died. However, prior to his death, he unlawfully sublet the suit premises without the Plaintiffs' knowledge and consent and in contravention of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 ("the Act"). Defendant No.2 (who is also now expired) was the person to whom the suit premises were unlawfully sublet. The legal heirs of Defendant No.1 were also brought on record but did not contest the suit by filing the Written Statement. Original Defendant No.2 filed his Written Statement contending that there is no cause of action for filing the suit. The said Defendant further denied the allegations of subletting, transfer by parting of possession of the suit premises by Defendant No.1 in favour of Defendant No.2. Defendant No.2 contended that he was lawfully protected under the provisions of the Act as he was residing with Defendant No.1 at the time of his death, and therefore, by virtue of Section 5(11)(c) of the Act he was entitled to be the

tenant. He, therefore, denied that there was any illegal subletting by Defendant No.1 to Defendant No.2.

3 Additionally, Defendant No.2 also contended that the suit was not maintainable as it was filed without permission of the Competent Authority under the provisions of the Slum Act. This argument was canvassed on the basis that the suit premises was declared as a 'slum'.

4 It is on these pleadings that the parties went to trial and evidence was led by the Plaintiffs and the Defendants. The issues framed by the Trial Court were “whether the plaintiffs prove that Defendant No.1 unlawfully sublet the suit premises in favour of Defendant No.2 ?” This was basically the main issue that was to be decided in the suit other than the maintainability. On this issue the Trial Court examined the evidence led by the parties which can be found from paragraphs 17 to 20 of the Trial Court's decision. It was the case of Defendant No.2 that he was the relative of original Defendant No.1, and therefore, is fully protected under Section 5(11)(c) of the Act. This assertion, Defendant No.2 was unable to prove. In fact as recorded in the

aforesaid paragraphs of the impugned order, it is quite clear that there were categorical admissions on behalf of the Defendants that there was no relationship between Defendant Nos.1 and 2. There is also an admission that Defendant No.2 was never residing with Defendant No.1 at the time of his death. After considering all this evidence the Trial Court came to a finding that the Defendants were guilty of illegally subletting the suit premises, and therefore, proceeded to decree the suit and directed the Defendants to handover vacant and peaceful possession of the suit premises to the Plaintiffs.

5 Being aggrieved by this order, Defendant Nos.2(a) and 2(b), heirs of original Defendant No.2, as well as Defendant Nos.3 to 8 approached the Appellate Bench of the Small Causes Court. The Appellate Bench also gave concurrent finding on this issue against the Defendants. The reasoning of the Appellate Bench can be found from paragraphs 7 to 10 of its decision.

6 Even on the issue of the suit not being maintainable, on the ground that the suit premises were declared as a “slum”, I find that the same has been dealt with by the Appellate Bench

from paragraph 12 onwards. The Appellate Bench has taken note of the fact that the order of declaration passed by the competent authority that the premises in question were declared as a slum was set aside by the Slum Tribunal. Even a subsequent declaration was set aside by the Slum Tribunal. The Appellate Bench, therefore, came to the conclusion that there was no impediment in filing the suit for eviction.

7 I have carefully gone through the order of the Trial Court as well as that of the Appellate Bench. I find that they have recorded several admissions made on behalf of the Defendants which clearly go to establish that the suit premises were unlawfully sublet by Defendant No.1 to Defendant No.2. I do not find from the record any perversity in the aforesaid finding and/or even remotely indicate that there is any error of law apparent on the face of record. The Trial Court as well as the Appellate Bench have given proper and cogent reasons for coming to the conclusions that they have. I see no reason to interfere with the same. I, therefore, find that the Civil Revision Application is without any merit and the same is accordingly dismissed. However in the facts and circumstances of the case,

there shall be no order as to costs. In view of dismissal of the Civil Revision Application, nothing survives in the Civil Application and the same is disposed of accordingly. Interim order, if any, passed in this Civil Revision Application shall stand vacated forthwith.

(B.P.COLABAWALLA,J.)