

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.257 OF 2017

The Central Bank of India	)	
Kodadad Circle Branch,	)	
Jam-E-Jamshed Charity Building,	)	
Khodadad Circle, Dadar (East),	)	
Mumbai-400014	)	...Petitioner (Ori.Defendant)

versus

1.Ardeshir Behram Dubash	)	
aged about 63 years,	)	
	)	
2.Manek Cyrus Guzder	)	
Aged about 60 years	)	
	)	
3.Laleh Ardeshir Dubash	)	
Aged about 38 years, and	)	
	)	
4.Feroz Ardeshir Dubash	)	
Aged about 31 years, all trustees of the	)	
Jam-E-Jamshed Charity Funds	)	
having its office at Ador House	)	
3 rd Floor, 6 K.Dubash Marg,		
Mumbai-400001	)	...Respondents (Ori.Plaintiffs)

Mr.S.M.Gorwadkar, Senior Counsel i/b. Mr.K.K.Jadhav, for the Petitioners.

Mr.D.D.Madon, Senior Counsel with Mr.S.V.Doijode and Ms.Taruna Nagpal
i/b. Doijode Associates, for the Respondents.

CORAM : G. S. KULKARNI, J.

DATE : 14th JULY,2017

P.C.:

1. Heard Mr.S.M.Gorwadkar, learned Senior Counsel for the petitioner and Mr.D.D.Madon, learned Senior Counsel for the respondents.
2. This Civil Revision Application challenges the judgment and order dated 28 February 2017 passed by the Appellate Bench of the Small Causes Court at Bombay, by which Appeal No.215 of 2016 as filed by the petitioner-defendant is dismissed thereby confirming the judgment and decree passed by the learned trial Judge dated 18 October 2013 and the subsequent order dated 15 April 2016 in T.E.Suit No.19/26/2016.
3. The premises in question and stated to be owned by the respondents-landlords are admeasuring 2982.58 sq.ft. situated on the ground floor in Jam-E-Jamshed Charity Building, situated at 811, Jam-E-Jamshed Road, Dadar (East), Mumbai-400014.
4. It is not in dispute that initially the petitioner – defendant was in possession of the suit premises under a leave and licence agreement dated 6 April 1964 which was for a period of ten years and which expired on 6 April 1974. It is also not in dispute that thereafter another leave and

licence agreement dated 19 April 1974 was executed between the respondents and the petitioner, which was also for a period of ten years and which expired on 18 April 1984. Under this agreement, monthly compensation/licence fee was Rs.2982.58 per month, plus electricity and water charges on proportionate basis. Though the relation between the parties was that of a licensor and licensee, on 21 January 2002 the Advocate for the respondents-landlords however addressed a notice to the petitioner stating to terminate the petitioner's tenancy and calling upon the petitioners to vacate and hand over the possession of the suit premises to the respondents.

5. On 26 September 2005 the respondents instituted the suit in question before the Small Causes Court at Mumbai seeking eviction of the petitioners and possession of the premises on the ground that the tenancy of the petitioners was terminated. The respondents have averred in the plaint that after the termination of tenancy, the petitioner's possession had become unlawful and illegal by virtue of the provisions of Maharashtra Rent Control Act as also the petitioner had ceased to enjoy the protection under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'the Bombay Rent Act') or any other Rent Control Act. In the proceedings of the suit, the respondents thereafter moved an application to amend the plaint, which came to be allowed by the learned trial judge. By virtue of the amendment dated 9 July 2012, paragraphs 3-A, 3-B and

4-A came to be incorporated to the plaint to contend that the petitioner was occupying the suit premises as on 1 February 1973 (date referred in Section 15A as inserted by an amendment to Bombay Rent Act conferring a deemed tenancy) under a subsisting leave and licence agreement dated 6 April 1964 and accordingly the defendant had become a deemed tenant and continued to be in possession of the suit premises. It was then averred that thereafter a further agreement dated 19 April 1974 styled as Leave and Licence Agreement came to be executed between the parties for a period of ten years from 1 April 1974. In paragraph 4-A, the respondents stated that in the event the Court was to come to a conclusion that the petitioner is to be the respondents' licensee, then in that event the petitioners' tenancy and/or licence to use and occupy the suit premises stood terminated by the respondents' advocate letter dated 21 January 2002. Alternatively, it was averred that the petitioner's tenancy or licence to use and occupy, the suit premises, stood terminated by the respondents by filing of the suit in question, on 26 September 2005, and thus the respondents were entitled to a decree of eviction against the petitioner.

6. The petitioner appeared before the trial court and filed its written statement. In paragraph 4 of the written statement the petitioner denied that the petitioner was a statutory tenant. It was averred that the petitioner is a licensee and the suit filed as a Tenancy Eviction Suit (T.E. & R.) was not maintainable. In paragraph 11 of the written statement again

the petitioner stated that the suit was between a licensor and a licensee and the tenancy eviction suit (T.E. & R.) was not maintainable. It would be appropriate to extract the said paragraphs in the written statement which read thus:-

“4. With reference to para 3 of the Plaint, the Defendant No.1 states that the said license was renewed from time to time and has not been terminated. The Defendant denies that the occupation of the Defendant was that of a statutory tenant. The Defendant states that the Defendant is a licensee and the above suit as a T.E. & R. suit is not maintainable.

....

11. With reference to para 9 of the Plaint, the Defendant states submits that the above Suit is between a Licensor and a Licensee and the above suit as a T.E. & R. suit is not maintainable.” (emphasis supplied)

7. In the additional written statement filed on behalf of the petitioner, a contention was raised that as the respondents have taken different pleas, in the plaint, firstly of the petitioners being a tenant, and secondly the petitioner being a licensee, it would be appropriate that the doctrine of election is made applicable and that the respondents would have to make their stand clear. However, as seen from paragraph 6 of the additional written statement, the petitioner submitted that alternate stand sought to be taken in the amended plaint, namely that the petitioner is a licensee, was not permissible in law and the suit was thus not maintainable. In paragraph 9 of the additional written statement, it was

averred that the petitioner maintained the averments and statements as made in the original written statement dated 30 October 2006. This according to the respondents would show that the petitioners maintained their stand, that the petitioner held a position of being a licensee of the suit premises. Apart from the issues as framed initially, on the backdrop of the amendment to the plaint, the learned trial Judge framed two additional issues, firstly whether the suit as filed was maintainable ?, and secondly, whether the suit was within limitation ?

8. The intervening circumstance occasioned by amendment of the plaint is of relevance, namely though the suit was initially registered as tenancy eviction suit (T.E. & R.) however the court by permitting the respondents to raise a plea of the petitioner being a licensee, the scope of the suit also included adjudication of the petitioner's right to continue in occupation as a licensee in view of the respondent's case of termination of the licence. This plea that the petitioner was a licensee, was permitted to be incorporated by amendment to the plaint as noted above. According to the respondents, this came to be accepted by the petitioners as there was no challenge to the said order permitting such amendment. Apart from this, it was a specific plea of the petitioners that they were occupying the premises as a licensee and not as a statutory tenant as seen in paragraph 3 of the written statement. This plea was maintained by the petitioner in the additional written statement as well, as noted above.

9. On the above background, the parties went on trial by leading their evidence. The learned trial Judge considering the rival contentions and the evidence placed on record, accepted the contention of the respondents that the petitioner was in illegal occupation of the suit premises as the licence to occupy stood terminated at the hands of the respondents. The learned trial Judge accordingly by this judgment and order dated 18 October 2013 decreed the suit, interalia directing the petitioners-defendants to hand over vacant possession of the suit -premises to the respondents-plaintiffs within three months.

10. The petitioners being aggrieved by the judgment and decree passed by the learned trial Judge preferred an appeal before the Appellate Bench of the Small Causes Court, Mumbai, being Appeal No.122 of 2014. The Appellate court by its judgment and order dated 23 April 2015 allowed the appeal by setting aside the judgment and decree passed by the learned trial Judge and remanded the suit to the trial Court to be decided afresh. This was on the ground that two additional issues framed, were not answered by the learned trial Judge. This judgment and order of the appellate court came to be challenged by the respondents-plaintiffs before this Court in Civil Writ Petition No.7084 of 2015. By judgment and order dated 18 February 2016, the learned Single Judge of this Court, set aside the the judgment of the Appellate Court to the extent it quashed and set

aside the decree dated 18 October 2013 and it was ordered that the decree would stand intact. However, it was directed that the trial Court shall return findings on the two additional issues which were framed and on which no finding was recorded. It was further observed that it would be open to the petitioner to challenge the decree dated 18 October 2013 as also the finding that would be recorded on the additional issues keeping open all contentions of the petitioners to challenge the decree of the learned trial Judge dated 18 October 2013.

11. Accordingly, the learned Trial Judge by an order dated 15 April 2016 returned findings on the additional issues holding that the suit as filed by the respondents was maintainable as also the suit was within limitation.

12. The petitioner being dissatisfied by the judgment and order of the learned trial Judge dated 18 October 2013 decreeing the suit and the finding of the learned trial Judge dated 15 April 2016 on the additional issues, approached the Appellate Bench of the Small Causes Court at Mumbai in Appeal No.215 of 2016. By the impugned judgment and order the appellate Bench affirming the findings as recorded by the learned Trial Judge has confirmed the judgment and decree dated 18 October 2013 and dismissed the appeal of the petitioners. The petitioners are before this Court in the present proceedings assailing the orders of the learned trial

Judge as confirmed by the appeal Court.

13. Mr.Gorwadkar, learned Senior Counsel for the petitioners in assailing the impugned orders would contend that the petitioner had become a deemed tenant with effect from 1 February 1973 by virtue of incorporation of Section 15A of the Bombay Rent Act, which was inserted by the Maharashtra Act of 17 of 1973. Mr.Gorwadkar would submit that the statutory tenancy as conferred on the petitioners by virtue of Section 15A of the Bombay Rent Act is sacrosanct and can in no manner stand obliterated or taken away, even if the petitioners had subsequently entered into a leave and licence agreement dated 1 September 1974. It is therefore submitted that it was necessary for the respondents-plaintiffs to issue a notice as contemplated under Section 106 of the Transfer of Property Act to terminate the petitioners' tenancy. He, therefore, contends that the plea of the respondents of the relation of the parties as that of a licensor and licensee, was wholly untenable and the suit itself was not maintainable as a licensee eviction suit. He submits that the trial Court has completely overlooked the statutory recognition of the petitioners' status as a tenant and thus the appellate Court could not have confirmed the eviction decree of the trial Court passed on the basis of relation of the parties as that of licensor and licensee. In support of the contention, Mr.Gorwadkar has placed reliance on the judgment of the learned Single Judge of this Court

in the case “*Hindustan Ferrodo Ltd. Vs. Hari Lachman Hasija*”¹

14. It may be pointed out that albeit the above submissions, Mr.Gorwadkar however would not dispute that the provisions of the Maharashtra Rent Control Act,1999 are not applicable to the premises which are let out to a bank or any public sector undertaking by virtue of Section 3(1)(b), and that the suit in question was filed on 26 September 2005 after coming into force the Maharashtra Rent Control Act,1999. Mr.Gorwadkar also does not dispute that by virtue of Section 41 of the Presidency Small Cause Courts Act, 1882, the Small Causes Court at Bombay would have jurisdiction to try and decide the suits between the licensor and the licensee as also between the landlord and tenant and thus, the suit before the Small Causes Court at Bombay would be maintainable.

15. On the other hand Mr.Madon, learned Senior Counsel for the respondents has taken strong exception to the submissions as made on behalf of the petitioners-defendants. Mr.Madon submits that the courts below have recorded findings of fact which are based on evidence. Mr.Madon has drawn the attention of the court to clause 10 of the leave and licence agreement dated 1 April 1974, whereby the petitioner has agreed to occupy the suit premises as a licensee. Clause 10 reads thus:

“Nothing herein contained shall constitute a tenancy or sub-tenancy between the Lensors and the Licensees, it

1 2003(5) Bom.C.R.790

being an express intention of the parties that this is a licence.”

He would submit that in view of clear position asserted by the petitioners in clause 10 of the leave and licence agreement and thereafter in the written statement that the petitioner was occupying the premises as a licensee, the petitioners were precluded from asserting that they were deemed tenants and that too by virtue of Section 15A of the Bombay Rent Act. He submits that for maintaining the suit in question, there was no requirement of issuance of a notice under Section 106 of the Transfer of Property Act, in view of settled position in law as laid down in the decision of the Supreme Court in the case “*V.Dhanapal Chettiar Vs. Yesodai Ammal*”² as also the decision of the Supreme Court in the case “*M/s.Nopany Investments (P) Ltd. Vs. Santokh Singh (HUF)*”³. Mr.Madon would submit that the submission being canvassed on behalf of the petitioners are untenable in view of the trial Court permitting alternative pleas to be raised by virtue of amendment to the plaint to which the petitioners completely conceded. Mr.Madon has drawn my attention to the observations in that regard as made in the impugned orders wherein it is held that the suit in the nature it was filed, was maintainable. He would therefore urge that the petition be dismissed.

16. Having heard the learned Counsel for the parties and with

² (1979)4 SCC 214

³ AIR 2008 SC 673

their assistance having perused the judgments of both the Courts below, as also the relevant documents as placed on record, I am unable to persuade myself to accept the submissions as urged on behalf of the petitioners. The only contention being urged on behalf of the petitioners is that the Courts below ought to have recognized that by virtue of the amendment to the Bombay Rent Act by incorporation of Section 15A, the petitioner with effect from 1 February 1973 had acquired a status of a deemed tenant and thus the petitioner was occupying the suit premises in the capacity of a tenant and not as a licensee. The submission is that this statutory status of tenancy would remain sacrosanct irrespective of the petitioners entering into a subsequent leave and licence agreement dated 19 April 1974 for a further period of ten years. The contention is that once the petitioners-defendants were permitted to occupy the premises after the licence period was over on 18 April 1984, there was no alternative for the respondents but to follow the mandate of Section 106 of the Transfer of Property Act to terminate the tenancy. Having not done so, the suit was not maintainable. According to Mr.Gorwadkar this vital position in law has missed the attention of the Courts below. The contention of Mr.Gorwadkar cannot be accepted, firstly for the reason that as noted above the petitioner itself has taken a stand in the written statement (dated 30 October 2006) in paragraphs 4 and 11 (supra) that the petitioner is a licensee and that a tenancy eviction suit is not maintainable. This assertion has also been maintained in the additional written statement filed by the petitioner on 29

October 2012 to contest the amendment of the plaint as noted above. Apart from this even in the last leave and licence agreement dated 18 April 1974 which was in operation for ten years as noted above, the parties had declared their relation as that of a licensor and licensee. In view of the clear assertion of the petitioner that the petitioner was occupying and enjoying the premises as a licensee, the petitioner cannot take a contrary position that the petitioner was occupying the suit premises as a tenant and contend that the suit would not be maintainable in the absence of a notice under Section 106 of the Transfer of Properties Act. Secondly, this assertion on behalf of the petitioner also cannot be accepted in view of the clear mandate of law as laid down in the decision of the Supreme Court in the case *V. Dhanapal Chettiar Vs. Yesodai Ammal* (supra) and the decision of the Supreme Court in the case *M/s.Nopany Investments (P) Ltd. Vs. Santokh Singh (HUF)* (supra) wherein the Supreme Court has held that it is well settled that filing of an eviction suit in general law itself is a notice to quit as tenant and therefore, no notice to quit under Section 106 of the Transfer of Property Act is necessary in order to enable the landlord to get a decree of eviction against the tenant. In any case, in the present case apart from the fact that the petitioner accepted the position that the relation between the respondent and the petitioner was that of a licensor and licensee as averred in the written statement, nonetheless it is not the case that there was no notice. The reliance of Mr.Gorwadkar on the decision of the learned Single Judge of this Court in the case *Hindustan*

Ferrodo Ltd. Vs. Hari Lachman Hasija is also unfounded inasmuch as even if it is accepted that the petitioner had become a deemed tenant with effect from 1 February 1973 by virtue of Section 15A of the Bombay Rent Act, nonetheless in view of the specific clause as incorporated in the leave and licence agreement dated 18 April 1974 namely clause 10, the petitioner has accepted itself to be a licensee. It had clearly given up its right to be a tenant. This is further confirmed by the petitioner in 2006 in the written statement in paragraphs 4 and 11 as noted above which seals the fate of the petitioner on this issue. No other issues are urged on behalf of the petitioner.

17. Having duly considered the findings of both the Courts below, I see no jurisdictional error or perversity in the findings as recorded in the impugned orders.

18. Resultantly, the civil revision application fails and is accordingly rejected. The petitioners-defendants shall hand over the possession of the premises to the respondents-plaintiffs on or before 30 July 2017.

19. At this stage Mr.Jadhav, learned Counsel for the petitioner submits that in the suit premises the petitioner bank is operating a branch which is also providing locker facility to its customers and it would be difficult for the petitioner to immediately shift to the alternative premises.

He, therefore, prays for longer time till December,2018 to vacate the suit premises.

20. Mr.Madon, learned Senior Counsel for the respondents has strongly opposed the period of extension as sought by Mr.Jadhav. Mr.Madon would submit that the decree in question came to be passed in the year 2013. The appeal also came to be rejected in the year February,2017 and that the petitioner is well aware of the consequence of the orders and thus ought to have made appropriate arrangement. Mr.Madon opposes any extension beyond August,2017.

21. Considering the submissions of Mr.Jadhav, in my opinion, the request is certainly not reasonable. The extension of time upto December,2018 is not an extension for any reasonable period and more particularly, in the circumstances as noted above. However, in the interest of justice and as the petitioners are conducting a branch in the suit premises, time to vacate the suit premises by the petitioner is extended upto 31 December 2017, however, subject to an unconditional undertaking to be filed on behalf of the petitioner within a period of two weeks from today that they shall hand over vacant and peaceful possession of the premises to the respondents on or before 31 December 2017. A copy of the undertaking be furnished to the learned advocate for the respondents as and when filed.

(G.S.Kulkarni, J)