

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.331 OF 2016

Vishwanath Madhukar Bhosale	...Applicant
<i>Versus</i>	
The State of Maharashtra and others	...Respondents

Mr Prakash V Dhopatkar, for the Applicant.
Mr Omkar G. Nagwekar, for the Respondent No.3.

CORAM: G.S. PATEL, J
DATED: 24th November 2017

PC:-

1. Although the matter is shown under the caption of dismissal today, by consent it is taken up for admission.

2. Heard.

3. In this Civil Revision Application, the original tenant challenges an appellate order dated 8th January 2016 of the Principal District Judge Thane dismissing Civil Appeal No. 337 of 2012 filed by the revision applicant in an ejectment decree passed on 3rd April 2012 by the Joint Civil Judge, Senior Division, Thane in Regular Civil Suit No. 720 of 2004.

4. The premises in question are a room admeasuring 10 ft x 10 ft in Sham Vaiti Chawl, near Kamgar Hospital Road, Thane (W). The landlord sought ejectment and recovery of arrears of rent in the amount of Rs. 12,960/-. The tenancy is not disputed. The landlord claims that the defendant was in arrears of rent.

5. The defendant entered a written statement in which he admitted the landlord-tenant relationship but claimed that the rent was Rs. 75/- per month and not Rs. 350/- per month as claimed by the plaintiff-landlord. The Trial Court took evidence and decreed the suit. The defendant appealed.

6. In the Appellate Court, the evidence was re-examined. The Appellate Court framed eight points for determination. Of these, the first was whether the plaintiff proved that the rent was Rs. 350/- per month excluding permitted increases and tax, and the second was whether the defendant was in default from 1st October 1997 to 30th April 2004.

7. On the first question, i.e, ascertainment of the actual rent (excluded permitted increases and taxes), the Appellate Court found that there was no evidence that the defendant-tenant had at any time applied for fixation of standard rent. There was nothing brought on record by the defendant to establish that the rent was Rs.75/- per month.

8. The Appellate Court, therefore, proceeded to the second question, that of ascertaining the correctness of the arrears claimed.

Here, the Court found as a matter of evidence, that after having been duly served and given notice as required by the statute, the defendant had neither paid the arrears nor deposited these in Court. I am told that this amount has been deposited in this Court only after Civil Revision Application was filed. That is clearly not good enough, and it is certainly not reason to set aside the appellate order, especially in a revision proceeding

9. Having regard to this conspectus, it is not possible to find fault with the impugned order. The Civil Revision Application is liable to be rejected.

10. I am told that there is a notice issued on 6th May 2016 several months after the impugned order under the provisions of the Slum Rehabilitation Act. Before neither of the Courts below was it at any point urged that ejectment action could not proceed or did not lie without permission of the Competent Authority in view of the provisions of Section 22 of the Slum Areas(Improvement, Clearance and Re-Development) Act 1971. This is not a point, therefore, that can be taken in revision to warrant interference with the impugned orders. It only needs to be noted that if indeed there is such an embargo consistent with the provisions of section 22, then undoubtedly the provisions of section 22(1)(b) will apply, because these provisions do not allow an ejectment decree to be put into execution without the necessary permission from the Competent Authority. Obviously, this decree will necessarily have to be subject to the provisions of the statute in that regard, if that Act is in fact actually applicable to the case in hand. All contentions in that regard

of both sides are left open as these cannot be determined in this proceeding.

11. The Civil Revision Application is rejected with these observations but with no order as to costs.

(G. S. PATEL, J)