

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 341 OF 2017

Shankar G. Kundalkar .. Applicant
vs.
Gandhali M. Lone .. Respondent

Mr. Durgesh Kulkarni i/b Mr. Sadanand W. Kulkarni for the Applicant.
Mr. J.V. Parmar a/w. Mr. O.S. Kamwal for the Respondent.

CORAM : M. S. SONAK, J.
DATE : 07 AUGUST 2017.

P.C. :-

1] Heard Mr. Durgesh Kulkarni, learned counsel for the applicant and Mr. J.V. Parmar, learned counsel for the respondent.

2] This civil revision application takes exception to the judgments and decrees dated 30 November 2013 and 4th May 2017 in L.E. & C. Suit No.154/178 of 2006, ordering the eviction of the applicant from the suit premises on the grounds that the petitioner was licensee in respect of suit premises and further, that such licence has been validly terminated.

3] Mr. Durgesh Kulkarni has very ably made the following submissions in support of the civil revision application:

(a) That there is absolutely no evidence on record to establish that the applicant was the licensee in respect of the suit premises. In the absence of any material regards this jurisdictional fact, the Small Causes Court, had no jurisdiction to entertain the suit under Section 41 of the Presidency Small Cause Court Act, 1882 (PSCCA);

(b) The applicant had no doubt instituted a suit to declare him as a tenant in respect of suit premises. Further, no doubt, such suit, came to be dismissed and the dismissal was ultimately upheld right up to this court. All this, at the highest, suggest that the applicant may be a trespasser *qua* the suit premises. No suit to evict a trespasser lies under Section 41 of PSCCA and therefore, the impugned judgments and orders are a nullity;

(c) The respondent-plaintiff, throughout the course of litigation have approbated and reprobated. At one stage, the respondent came up with the theory that the applicant was in possession of the suit premises in pursuance of a conducting agreement. At another stage, the respondent came up with

theory that the applicant was a licensee. Mr. Kulkarni submits that if the evidence is perused, it is clear that it was also the case of the respondent that the applicant was nothing but a trespasser insofar as the suit premises are concerned. Mr.Kulkarni submits that in absence of any categorical stand on the part of the respondent and in categorical finding that the applicant was indeed licensee in respect of suit premises, the Small Causes Court was dis-entitled to exercise any jurisdiction under Section 41 of the PSCCA and to make the impugned judgment and decree, which has now been erroneously confirmed by the Appellate Bench; and

(d) Then reference was also made to the definition of “*Licencee*” under Section 7(5) of the Maharashtra Rent Control Act, 1999 (Rent Act) to submit that the term expressly excludes a person conducting a running business belonging to licensor. On this basis, Mr. Kulkarni submits that under no circumstances could the applicant be regarded as licensee in respect of suit premises, so as to enable the Small Causes Court to exercise jurisdiction under Section 41 of the PSCCA. .

4] Mr. J.V. Parmar, learned counsel for the respondent, submits that the two courts on basis of detailed consideration of the material on record have returned the finding of fact that the applicant was indeed the licensee in respect of suit premises and further, such licence stand duly terminated. Mr. Parmar submits that it is the applicant, who is approbating and reprobating in the matter. The applicant claims tenancy in respect of the suit premises. Having failed, the applicant now claims to be a trespasser, at this belated stage, only in order to continue in possession of the suit premise and in the fond hope that there will be several more years of litigation, in case, the respondent is required to institute suit in the Civil Court to secure his eviction. Mr. Parmar points out that the evidence on record very clearly establishes that the applicant was a licensee and consequent upon the termination of the licence was liable to be evicted by resort to proceedings under Section 41 of the PSCCA. Mr. Parmar places reliance upon the decision of this Court in ***Prabhudas Kotecha vs. Manhabala J. Damodar and ors. - 2013 (15) SCC 358***

5] The rival contentions now fall for my determination.

6] In the present case, there is no dispute that the applicant had earlier instituted R.A.D Suit No. 2583 of 1997 before the Small Causes Court claiming a declaration that he was the tenant in respect of suit premises. Such suit, came to be dismissed *inter alia* on the ground that the applicant was neither found to be tenant in respect of suit premises nor a licensee prior to cut off date of 1st February 1973. The judgment and decree dated 26th July 2006 made by the Small Causes Court in R.A.D. Suit No. 2583 of 1997 has since been confirmed right up to this Court.

7] The Small Causes Court in L.E. & C. Suit No. 154/178/2006 had framed specific issue as to whether the applicant was licensee of the respondent in respect of the suit premises. This issue has been considered in great details at paragraphs 16 to 41 of the judgment and decree dated 30th November 2013 and answered in the affirmative. The Small Causes Court has made reference to both oral as well as documentary evidence on record. The Small Causes Court has taken into consideration the contradictory pleas taken by the applicant. The Small Causes Court has taken into consideration the orders made by the Statutory Authorities in relation to liquor business undertaken by the applicant in the suit premises and on

basis of such material returned a finding that the applicant was indeed the licensee in respect of suit premises. The material on record indicates that the applicant has obtained renewal of excise licences by representing that he was licensee in respect of the suit premises.

8] The applicant agitated the very same issue before the Appellate Bench of the Small Causes Court, which has, at paragraphs 14 to 31, considered the issue of the applicant being a licensee in respect of suit premises and affirmed the finding recorded by the Small Causes Court. The Appellate Bench, by detailed discussion and by adverting to both oral as well as documentary evidence on record, has held that the applicant was indeed licensee of the suit premises and further, such licence has been validly terminated.

9] This means that there are concurrent findings of fact to the effect that the applicant was indeed the licensee in respect of suit premises. There is no perversity pointed out in the record of such concurrent findings of fact. In exercise of powers under Section 115 of the CPC, it is ordinarily not open to this Court to re-appreciate in

great details the material on record as if, this Court was exercising appellate jurisdiction.

10] In *N. Eswari w/o. Adinarayana vs. K. Swarajya Lakshmi, w/o Late K.V.L.N.A. Sastry – (2009) 9 SCC 678*, the Apex Court has held that it is not open to the High Court, in exercise of its revisional jurisdiction, to interfere with concurrent findings of fact unless of course the findings of fact are perverse or arbitrary. Similarly, in *Rajbir Kaur v. S. Chokesiri & Co.- (1989) 1 SCC 19*, at para 43, the Apex Court has held that when the findings of fact recorded by the Courts below are supportable on the evidence on record, the revisional court must, indeed, be reluctant to embark upon an independent reassessment of the evidence and to supplant a conclusion of its own, so long as the evidence on record admitted of and supported the one reached by the Courts below. The Apex Court went on to observe as follows:

“With respect to the High Court, we are afraid, the exercise made by it in its revisional jurisdiction incurs the criticism that the concurrent finding of fact of the courts below could not be dealt and supplanted by a different finding arrived at on an independent reassessment of evidence as was done in this case.”

11] Applying aforesaid principles to the facts and circumstances of

the present case, it is not possible to disturb the findings of fact concurrently recorded by the two courts to the effect that the applicant was a licensee in respect of suit premises and that such licence has been validly terminated.

12] Mr. Kulkarni's contention on the basis of definition of the term “*licensee*” under Section 7(5) of the Rent Act also cannot be accepted for at least two reasons. Firstly, there are concurrent findings of fact which establish that the applicant was indeed the licensee in respect of the suit premises. Secondly, the acceptance of any such contention would militate against the law laid down by the Supreme Court in *Prabhudas Kotecha (supra)*.

13] Taking into consideration the bold plea raised by the applicant to the effect that he is a trespasser insofar as the suit premises is concerned and therefore, he can only be evicted by institution of a civil suit before the Civil Court, it is necessary to observe that there is nothing bonafide regards such contention. The applicant has continued in the suit premises for several years on the basis of his own contention that he is the tenant in respect of the suit premises. When eviction was threatened, the applicant had applied for a

declaration as regards to his tenancy. The applicant failed to secure such a declaration from the Civil Court and this position has attained finality up to this court. One of the reasons as to why the applicant failed to secure a declaration of tenancy is that the applicant was found to be a licensee in respect of suit premises but since such licence was post the cut off date, i.e., 1st February 1973, the applicant was not entitled to protection of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. All this, reflects upon the bonafides of the applicant's contention.

14] In *Maria Margarida Sequeira Fernandes & ors vs. Erasmo Jack DE Sequeira (dead) through Lrs. - (2012) 5 SCC 370*, the Apex Court has observed that the truth should be guiding star in judicial process. The truth alone has to be foundation of justice. The entire judicial system has been created only to discern and find out the real truth. This is the journey of discovering the truth. That is their mandate, obligation and bounden duty. Justice system will acquire credibility only when people will be convinced that justice is based on the foundation of the truth. It must be the endeavour of all the judicial officers and Judges to ascertain truth in every matter and no stone should be left

unturned in achieving this object. The Courts must give greater emphasis on the veracity of the pleadings and documents in order to ascertain the truth.

14] In the same case, the Apex Court has expressed serious concern about the false claims and defences. At paragraphs 81 and 82, the Apex Court has observed that false claims and defences are really serious problems with real estate litigation, predominantly because of ever escalating price of the real estate. By reference to decision in *Ramrameshwari Devi vs. Nirmala Devi – (2011) 8 SCC*, the Apex Court has further observed that unless wrongdoers are denied profits from frivolous litigation, it would be difficult to prevent it. In order to curb uncalled for and frivolous litigation, the Courts have to ensure that there is no incentive or motive for uncalled litigation. It is a matter of common experience that the Court's otherwise scarce time is consumed or more appropriately, wasted in a large number of uncalled for cases. This problem can be solved or at least minimized if exemplary costs is imposed for instituting frivolous litigation.

15] Applying the aforesaid principles, this civil revision application is required to be dismissed with costs. However, considering the restraint and exemplary presentation of the case by Mr. Durgesh Kulkarni, learned counsel for the applicant, this Court refrains from imposing of any costs. The civil revision application is however, dismissed without any order as to costs.

16] At this stage, Mr. Kulkarni, learned counsel for the applicant, applies for restraint on execution of the impugned decree for a period of six weeks. Subject to filing usual undertaking by the applicant in this Court within a period of one week from today, further execution of the decree is stayed for a period of six weeks from today. The applicant is also directed to maintain *status quo* in respect of the suit premises.

(M. S. SONAK, J.)