

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 886 OF 2003

Hatimbhai Mohamedali Chinwala .. Petitioner

vs.

Amritlal Ranchhoddas Mehta
(since deceased by his heir
and legal representatives) and ors. .. Respondents

Mr. Sayed a/w. Mr. Shabbir Kapadia for the Petitioner.
Mr. Rohan Sonawane for Respondent No.2.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 5th October 2017.
Date of Pronouncing the Judgment : 11th October 2017.

JUDGEMENT:-

1] This petition is directed against the judgment and order dated 27th November 2002 made by the Appellate Bench of the Small Causes Court, Mumbai in Appeal Nos.357 of 1999 and 391 of 1999 setting aside judgment and decree dated 7th May 1999 made by the Small Causes Court in R.A.E. Suit No.2523 of 1969 ordering the eviction of the respondents (original defendants).

2] The petitioner, Hatimbhai M. Chinwala (Chinwala) instituted R.A.E. Suit No. 2523 of 1969 against the legal representatives of Amritlal Mehta (Mehta), M/s. M.K. Metal

Traders (MKMT) and legal representatives of Fatimabai Alibhai (Alibhai) seeking *inter alia* eviction of Mehta and MKMT from the suit premises. Chinwala, in R.A.E. Suit No. 2523 of 1969 pleaded that he was the original tenant of the suit premises which he sub-let to Mehta. Mehta, unauthorisedly, parted possession of the suit premises to MKMT. Therefore, Chinwala claimed eviction of Mehta and MKMT. Initially, Alibhai, the owners of suit premises were not impleaded as defendants to the suit. Thereafter, upon directions from the High Court, Alibhai came to be impleaded as party to the proceedings.

3] The defence of Mehta was that he has no truck with the suit premises. MKMT took up the defence that the suit premises were leased to it by the owners Alibhai and MKMT has no truck either with Mehta or with Chinwala and therefore, there was no reason to make any decree of eviction at the instance of Chinwala. Alibhai raised the defence that the suit premises were purchased by them vide Conveyance dated 23rd January 1962 from Official Trustee of Bombay. Alibhai contended that on the date of purchase, the tenancy receipts were already standing in the name of Mehta. Mehta

surrendered the tenancy to Alibhai and thereafter, the suit premises were leased to MKMT.

4] Based upon the pleadings, the Small Causes Court (Trial Court) framed the following issues:

“7. Issues for decision are:

1. Whether this court has jurisdiction to try the present suit?

1A. Does the Plaintiff prove that he bonafide and reasonably required the suit premises for personal use and occupation ?

2. Does he further prove that no greater hardship will be caused to the defendant No.1 if decree for eviction is passed ?

3. Does he prove that the defendant No.1 unlawfully sublet, assigned or transferred his interest in any other manner in the suit premises to the defendant No.2.

4. Does the defendant No.1 prove that the Plaintiffs has surrendered all his tenancy rights in his favour as alleged in para 6 of the w.s. ?

5. Is the tenancy of the defendant No.1 validly determined ?

6. Whether the suit as filed is maintainable against the defendant No.1a and 1b.

7. Whether the suit is barred by law of Limitation ?

8. Does the defendant No.2 prove that he has become the tenant of the suit premises directly from the landlord and therefore, he is protected ?

9. Is Plaintiff entitled to possession ?

10. What decree and what order ?”

5] The aforesaid issues were answered by the Trial Court in the following manner:

- “8. *My findings are:*
1. *Yes.*
 - 1A. *No*
 2. *Does not arise.*
 3. *Yes, unlawfully parted with possession of the suit premises.*
 4. *No.*
 5. *Does not survive, If survives, yes.*
 6. *Yes.*
 7. *No.*
 8. *No.*
 9. *Yes.*
 10. *As per Order.”*

6] The Trial Court, accordingly, ordered eviction of the defendants to the suit and directed restoration of possession to Chinwala.

7] MKMT and Mehta's instituted Appeal Nos.218 of 1986 and 598 of 1986 to question the Trial Court's judgment and decree dated 11th February 1986 before the Division Bench of the Small Causes Court (Appeal Court). The Appeal Court, by judgment and decree dated 13th October 1993 dismissed the appeals, but stayed the execution of eviction decree for a period of eight weeks.

8] MKMT and Mehta instituted Writ Petition Nos.4840 of 1993 and 1726 of 1994 to question the Appeal Court's

judgment and order dated 13th October 1993 confirming the Trial Court's eviction decree dated 11th February 1986. At this stage, it is relevant to note that Alibhai had not been impleaded as party to the proceedings.

9] Writ Petition Nos. 4840 of 1993 and 1726 of 1994 were disposed of by common judgment and order dated 19th February 1998. Writ Petition No. 1726 of 1994 was permitted to be withdrawn, taking into consideration the averments made by Mehtas in their written statement to the effect that they had no truck with the suit premises. However, Writ Petition No. 4840 of 1993 instituted by MKMT was allowed and the matter was remanded to the Trial Court for fresh adjudication after impleading Alibhai as party to the proceedings. The operative portion of judgment and order dated 19th February 1998 , insofar as Writ Petition No. 4840 of 1993 is concerned, reads thus:

“6. In the result therefore, Writ Petition No. 4540 of 1993 succeeds and is allowed, Orders passed by both the Courts below impugned in the petition are set aside. The Plaintiff – respondent No.1 Hatimbhai is directed to join the landlady Fatimabai as party defendant in the suit and the Trial Court is directed to try the suit and decide it in accordance with law and in the light of the observations made above. Considering that the suit has been filed in

the year 1969, the Trial Court shall decide the suit as expeditiously as possible and in any case, within one year from the date on which the record of the case, together with writ of this order, is received by the Trial Court.”

10] Upon remand, the Trial Court, by judgment and decree dated 7th May 1999 decreed the suit by making the following order :

7. “ORDER

1. *Plaintiff's suit is decreed against all defendants except defendant Nos.3(a), 3(b) and 3(c).*
2. *The Defendant Nos.1 (a)(ii), 1(a)(ii), 1(a)(iii), 1(b) and 2 are hereby directed to hand over quite, vacant and peaceful possession of the suit premises shop on the ground floor of the property known as Sattar Manzil, bearing House No. 108 situate at Banian Street, Bombay – 3 to the Plaintiff within two months from today and also directed to pay cost and professional costs of the Plaintiff and bear their own costs.*
3. *Defendant Nos. 3 (a), 3(b) and 3(c) are to bear their own costs.*
4. *A Decree shall be drawn up accordingly.”*

11] MKMT and Alibhai instituted Appeal Nos. 357 of 1999 and 391 of 1999 to question the Trial Court's judgment and decree dated 7th May 1999 before the Division Bench of the Small Causes Court (Appeal Court), which has by the impugned judgment and order dated 27th November 2002, allowed the appeals and set aside the Trial Court's judgment

and decree dated 7th May 1999. Hence, the present petition by Chinwala.

12] Mr. Sayed, learned counsel for the petitioner Chinwala, submits that the Deed of Conveyance dated 23rd January 1962, by which, Alibhai has purchased the suit premises from the Official Trustee makes reference to Chinwala being the tenant of the suit premises. Mr. Sayed submits that despite repeated applications, Alibhai refused to produce the Deed of Conveyance dated 23rd January 1962 on record. However, some letter/extract was produced, in which, the name of Chinwala finds reference. Mr. Sayed submits that this clearly establishes that Chinwala was the tenant in respect of suit premises.

13] Mr. Sayed further submits that there were no pleadings to the effect that Chinwala, who was earlier the tenant of the premises has either expressly or impliedly surrendered tenancy rights to the suit premises in favour of the original owner. In the absence of any such pleadings, the Appeal Court, was not at all entitled to conclude that Chinwala has impliedly surrendered tenancy to the suit premises, thereby

making way to the owners to create a fresh tenancy in favour of MKMT. Mr. Sayed submits that the Appeal Court failed to appreciate that evidence, which has no backing of pleadings, cannot even be looked into much less relied upon. On this basis, Mr. Sayed submits that the impugned judgment and decree made by the Appeal Court warrants interference.

14] Mr. Sayed submits that implied surrender of tenancy can never be easily presumed. He submits that merely because there is some evidence on record that Mehtas were in possession of the suit premises from 1954 and even the rent receipts are directly in the name of Mehtas from 1962, that by itself, does not mean or imply that Chinwala had surrendered the tenancy to the suit premises. Mr. Sayed submits that the payment of rent by Mehta, in such circumstances is required to be construed as payment made by Mehta for and on behalf of real tenant Chinwala. Mr. Sayed relies upon ***Nemi Chand vs. Onkar Lal – AIR 1991 Supreme Court 2046*** in support of such propositions.

15] Mr. Sayed submits that there was ample evidence on record, which establishes that Chinwala was real tenant in

respect of suit premises and MKMT was an unauthorised occupant inducted by Mehtas. Mr. Sayed submits that *qua* Mehta, it is Chinwala, who answered definition of expression “*landlord*”. Therefore, the Trial Court on both occasions was entirely justified in ordering the eviction of MKMT and directing restoration of possession in favour of Chinwala.

16] Mr. Sayed finally, submits that there is evidence on record that Chinwala required the suit premises for reasonable and *bona fide* purposes. In such circumstances, the Trial Court, on two occasions, was right in ordering eviction of MKMT and the Appeal Court exceeded jurisdiction in reversing the Trial Court and dismissing Chinwala's suit. Mr. Sayed submits that this is a fit case to exercise extra ordinary jurisdiction under Article 227 of the Constitution of India and to set aside the Appeal Court's judgment and order dated 27th November 2002 and to restore the Trial Court's judgment and decree dated 7th May 1999.

17] Mr. Rohan Sonawane, learned counsel for respondent No.2., i.e., M/s. M.K. Metal Traders, submits that there is no evidence regards the status of Chinwala *qua* the suit premises.

He submits that the Deed of Conveyance dated 23rd January 1962 was never produced any evidence and therefore, there is no basis to contend that this Deed of Conveyance acknowledges Chinwala as the original tenant. Mr. Sonawane submits that some letters or extracts, which have not even been proved or admitted in evidence can therefore, never be relied upon in support of Chinwala's claim of tenancy to the suit premises.

18] Mr. Sonawane, submits that without prejudice there is ample evidence on record which suggests that Chinwala had virtually no truck with the suit premises since the year 1954. Chinwala has not produced any documents whatsoever to establish that Chinwala paying any rent to erstwhile landlord in respect of suit premises. If, from 1954 onwards, Chinwala has not complied with his obligation as tenant, then, the only inference that can be drawn is that Chinwala, assuming he was at some stage the tenant of the suit premises, surrendered the tenancy. At the stage when Alibhai purchased the suit premises, Chinwala was no longer the tenant of the suit premises. Alibhai, therefore, created a fresh tenancy in favour of MKMT and this aspect is more than amply borne out

from the material on record. Mr. Sonawane submits that this Court, in exercise of its extra ordinary jurisdiction under Article 227 of the Constitution of India, may not re-appreciate the evidence on record particularly since no perversity has been demonstrated by the petitioners, insofar as the findings on fact recorded by the Appeal Court are concerned. Mr.Sonawane submits that this petition may therefore, be dismissed with costs.

19] The rival contentions now fall for determination.

20] There is no clear material on record to establish the status of Chinwala. Chinwala was duty bound to produce on record the proper and cogent material to establish that he was indeed the tenant in respect of suit premises as on the date of institution of R.A.E. Suit No. 2523 of 1969. This, Chinwala has failed.

21] Mr. Sayed learned counsel for Chinwala, claims that by Deed of Conveyance dated 23rd January 1962, Alibhai purchased the suit premises from the Official Trustee of Bombay, reflects the name of Chinwala as a tenant. If this be

so, nothing prevented Chinwala from producing the Deed of Conveyance, which was obviously registered document. It is not sufficient to urge that repeated applications were made calling upon Alibhai to produce such Deed of Conveyance. Since, this was a registered document, it was for Chinwala to summon the registering authorities or obtain certified copy of such document from the Official Trustee of the Bombay. Chinwala did not even apply for leave to lead secondary evidence with regard to Deed of Conveyance dated 23rd January 1962.

22] In the course of arguments, Mr. Sayed, attempted to hand in a list, which he submitted, was an Annexure to the Conveyance dated 23rd January 1962. Mr. Sayed submitted that since this annexure reflects the name of Chinwala at serial No.4, the tenancy rights of Chinwala to the suit premises stands established. At the stage of deciding this petition, it will not be appropriate to take cognizance of such alleged annexure to the Deed of Conveyance dated 23rd January 1962. There is nothing in the annexure which was handed in to indicate that it was some annexure to the Deed of Conveyance dated 23rd January 1962. Further, the

significance of the name of Chinwala in the said annexure was also by no means clear. On basis of such annexure therefore, it cannot be said that Chinwala had cleared the position with regard to his status *qua* the suit premises.

23] Even assuming that Chinwala was at some stage, the tenant in respect of suit premises, the Appeal Court, upon due consideration of the evidence on record has noted that at least on the date of institution of R.A.E. Suit No. 2523 of 1969, there was no material to establish that Chinwala was indeed the tenant of the suit premises and M/s. MKMT was his sub-tenant or transferee from his sub-tenant Mehta. The Appeal Court has noted that in the year 1962 Alibhai purchased the suit premises. At that stage, the rent receipt was in the name of Mehta. The Appeal Court has also noted that since several years prior to institution of the suit, Chinwala made no enquiries as to in whose name the rent receipts were issued and who was paying the rents. Amritlal Mehta in his deposition, has stated that his father surrendered the tenancy to the landlords and thereafter, the landlords, created a fresh tenancy in favour of MKMT. In such

circumstances the Appeal Court, has held that MKMT was not some unauthorized transferee in respect of the suit premises.

24] The crucial issue is status of Chinwala *qua* the suit premises. Chinwala, as a plaintiff, has to stand or fall on his own feet. Assuming that something can be said about the findings recorded by the Appeal Court as regards surrender of tenancy, it is to be noted that for such findings to assume importance, Chinwala, had to, in the first instance, establish by cogent evidence his precise status *qua* suit property. The material on record suggests that Chinwala has virtually abandoned relationship with the suit premises for several years prior to institution of the suit. When construed from this perspective, the impugned judgment and order made by the Appeal Court warrants no interference in the exercise of extraordinary jurisdiction under Article 227 of the Constitution of India.

25] The decision in *Nemi Chand (supra)*, is distinguishable on facts. There, the lessee in possession of the suit property lent certain amount to the landlord on security of the suit property which was mortgaged to him by the landlord. On the

expiry of the period mortgage, a suit for redemption was filed by the landlord. In these circumstances, it was held that the relationship of the landlord, tenant has subsisted, even though, the parties have entered into a new relationship of creditor and debtor on the security of property already in possession of the lessee as a lessee. In the said case, the document of mortgage indicated that during the period of mortgage, which was to for five years, neither interest nor rents were payable by the parties, both amounts being equal. This showed that the rent was kept alive and it was adjusted against the interest. That was the adjustment of one liability against another. In other words the relationship between the parties as lessor and lessee subsisted. There was no merger of the lease and the mortgage. No merger could take place in law. The decree for redemption only redeemed the mortgage and did not determine the lease. That was a relationship which still subsisted and determinable according to law.

26] Now in the facts of the present case, no such situation, as had arisen before the Hon'ble Supreme Court in case of *Nemi Chand (supra)*, even remotely arises. Chinwala has produced no evidence on record to indicate that the

relationship of the tenancy, assuming that it existed some point earlier, was in fact, in existence on the date of institution of the suit for eviction. Chinwala has nowhere demonstrated payment of any rent or demonstrated conduct consistent with the claim of tenancy to the suit premises for several years prior to the institution of the suit for eviction. In such circumstances, there is no reason to fault the impugned order made by the Appeal Court. The decision in *Nemi Chand (supra)*, is really, of no assistance to Chinwala.

27] The Appeal Court, is a final Court on facts. In this case, Mr. Sayed, learned counsel for Chinwala, has failed to demonstrate any perversity in the record of findings of fact. It is true that there are some inconsistencies in the pleadings of the parties. However, such inconsistencies apply to both the plaintiff as well as the defendants. Ultimately, the issues were framed by the Trial Court and the evidence has been lead on all the issues. The Trial Court, on the basis of the evidence on record, did hold in favour of Chinwala. However, the Appeal Court, upon re-appreciation of the evidence and taking note of the circumstance that Chinwala has failed to produce any cogent evidence to explain his precise status, has non-suited

Chinwala. In such circumstances, it cannot be said that the findings recorded suffer from perversity so as to warrant interference under Article 227 of the Constitution of India.

28] In this case, the Trial Court has more or less proceeded on the premise that Chinwala was indeed the tenant of the suit premises on the date he instituted the suit. This is despite the fact that at least from 1954 onwards, the material on record suggests that Chinwala had practically no truck with the suit premises and Chinwala had neither paid any rent nor conducted himself consistent with his claimed status of tenancy to the suit premises. The Appeal Court, in such circumstances, cannot be said to have been exercised its appellate jurisdiction unreasonably or arbitrarily. In exercise of jurisdiction under Article 227 of the Constitution of India, it is not for this Court to re-appreciate the entire evidence on record or take note of some contradictions here and there.

29] The petitioner has failed to demonstrate any jurisdictional error in the impugned order. The petitioner has also failed to demonstrate any perversity in the finding recorded by the Appeal Court. This is also not a case where

any relevant and vital piece of evidence has been overlooked by the Appeal Court. This is a case where the Appeal Court, upon due appreciation of evidence on record has disagreed with findings recorded by the Trial Court. The Appeal Court is normally a final Court insofar as the facts are concerned. As long as case of perversity is not made out, it is not for this Court to interfere in exercise of jurisdiction under Article 227 of the Constitution of India. Merely because some other view is possible or plausible, interference under Article 227 of the Constitution of India is not warranted. In a matter of this nature, this Court, is not called upon to exercise any appellate jurisdiction. The circumstance that Chinwala has not bothered to comply with any obligation *qua* the suit premises for several years prior to institution of the suit seeking eviction of MKMT, is not some irrelevant or extraneous consideration. In this case, the Trial Court had not assigned any importance to this aspect. However, the Appeal Court has given due weightage to this aspect, so as not to order eviction of MKMT, who is, in possession of the suit premises at least since the year 1962 or even earlier. Again, as stated earlier, there is really no perversity in the record of findings of fact or in the approach of Appeal Court. The decision in *Nemi Chand (supra)*, which

was main plank of Mr. Sayed's contention, is found to be clearly distinguishable. The factual situation in *Nemi Chand (supra)*, was entirely different and therefore, not comparable to the fact situation in the present case.

30] Upon cumulative consideration of the facts and circumstances, the legal position as well as the restrictive parameters of interference under Article 227 of the Constitution of India, there is no case made out to warrant interference with the impugned order. This petition is therefore, dismissed. There shall however, be no order as to costs.

(M. S. SONAK, J.)