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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELATE JURISDICTION

CIVIL WRIT PETITION NO. 6803 OF 2015

Prabhakar Tukaram Savardekar
(since deceased) through LRs. Sharada
Prabbakar Savardekar & Anr. ..Petitioners.

V/s.
Smt. Shashiprabha Sangaji & Ors. ..Respondents.

Ms.Indrayni Koparkar for the Petitioners.

Mr.N.V.Bandiwadekar for Respondent Nos.1 to 4.

Coram : N.M.Jamdar, J.

Date : 23 March 2017

ORAL ORDER

By this petition, the Petitioners have challenged the concurrent Judgments and Orders passed by the Civil Judge, S.D. Kolhapur in Regular Civil Suit No. 1194/2000 on 18 August 2006 and the District Court, Kolhapur in Regular Civil Appeal No.257/2006 dated 27 April 2015, decreeing the suit filed by the Respondents-landlords and dismissing the appeal filed by the Petitioner-tenant.

2. The grounds for eviction held against the Petitioner-tenant are: default in payment of rent, unauthorized subletting, and unauthorised construction of permanent nature.

3. As regards the default in payment of rent, the learned counsel for the Petitioners submitted that the Appellate Court, even after having rendered a finding that reasons given by the Trial Court on the ground of default were not correct, went ahead passed a decree of eviction on the ground of default. I have considered this submission. The Appellate Court though has held that the reasons given by the Trial Court on the ground of default are not sustainable, has taken note of the irregularity of payment of rent by the Petitioner during the appeal. The learned District Judge was correct in taking a view that the tenant must continue to regularly deposit the rent during the appeal proceedings. The learned District Judge has tabulated the details regarding the deposit of rent by the Petitioner in the appeal and the table reflects irregularity in deposit of rent by the Petitioner. For example, at serial No.6, it shows that the rent was not paid for two months. Serial No.7 shows that the rent is not paid for two months. Serial No.8 shows that the rent for months of March to June was paid in May. Serial No.9 shows the rent for the months of July to November was paid in December. Therefore, if the table is to be looked into, the view taken by the learned District Judge that the Petitioner was not regular in depositing the rent in the appeal, cannot be faulted with.

4. Next ground on which decree has been passed against the Petitioner is that of subletting. It is the case of the Respondents-landlord that the Petitioner has created sub-tenancy and relinquished control over the suit premises. This case has been accepted by both the Courts. The learned counsel for the Petitioners submitted that partnership was discontinued immediately after receipt of notice and the Petitioners has not lost control of the suit premises.

5. The aspect of creation of partnership firm has been dealt in detail by the learned District Judge. Once the partnership firm was created and the partner Mr.Dinar Mantri was found in occupation of the suit premises, it was for the Petitioner to explain the position. The Petitioner did not produce the relevant documents i.e. Partnership Deed or certificate of registration of partnership and only produced extension deed. The arrangement in the partnership was that Mr.Dinar Mantri was to look after all money transactions. The share of the Petitioner was only 25%. It is also pointed out by the learned counsel for the Respondents that the name of D.G. Electronics was taken from the name of Dinar G.Mantri. The learned District Judge, after assessment of the evidence, and noting the failure of the Petitioner to produce cogent evidence, drew a conclusion that the Petitioner had relinquished the control over the suit premises. Nothing is explained as to why the Petitioner will take only 25% share and regarding the other aspects taken note by the

learned District Judge. Thus, the finding of the learned District Judge cannot be stated to be perverse. Merely because the partnership firm was not continued after receipt of the notice will not wash out the effect of the act of the Petitioner of creating sub-tenancy without the permission of the Respondents-landlord.

6. The third ground is of construction of permanent nature. Both the Courts have rendered a finding that the mezzanine floor of permanent nature was constructed. The learned counsel for the Petitioner submitted that the height of the so called mezzanine floor was only 5 ft. and it cannot be termed as a mezzanine floor. It was submitted that that the construction is not of permanent nature and rent was also paid in respect of this construction. It has been pointed out by the learned counsel for the Respondents that the area of the premises is 130 sq. ft. and mezzanine floor is 109 sq. ft. That means the mezzanine floor covers almost the entire suit premises. Mezzanine floor is supported by four wooden beams and wooden pillars and thereafter covered with asbestos sheet with false ceiling. Both the Courts, in view of the evidence led, were entitled to take a view that the constructions was of permanent nature. Since mezzanine floor was constructed for storage of goods, the height of the mezzanine floor is of no consequence. It is not that the Respondents-landlord has accepted the rent for the mezzanine floor and has regularized the same. The rent was paid as per the standard rent fixed which took into consideration the mezzanine floor.

7. In these circumstances, it is not possible to hold that the appreciation of evidence by both the Courts is perverse so as to warrant interference in writ jurisdiction. The writ petition accordingly is rejected.

8. The learned counsel for the Petitioner seeks extension of ad-interim arrangement. Both the parties will accordingly maintain status quo for a period of 8 weeks from today.

(N.M.Jamdar, J.)