

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2254 OF 1997

Gunaji Pandurang Mohite	...Petitioner
<i>Versus</i>	
Naseeb Singh Sundarsingh	...Respondent

Mr RS Datar, *with Aditi Athawale, for the Petitioner.*
Ms Madhavi Tavanandi, *for the Respondent.*

CORAM: G.S. PATEL, J
DATED: 3rd November 2017

PC:-

1. Heard.

2. The petition is filed by the original landlord/Plaintiff. It is directed against an order dated 3rd September 1996 of the 4th Additional District Judge, Thane in an Appeal filed by the original Defendant, the present Respondent. Rule was issued on 23rd June 1997.

3. The premises in question are one of four tenements at Hajurigaon, Wagle Estate Road No. 14, Thane. The area in occupation of the Defendant is a single room, 10 feet x 10 feet. The

whole of this is a chawl. It seems not to be in dispute that the monthly rent was Rs 25/- from the year 1972 or thereabout.

4. The Plaintiff sought to evict the Defendant on two grounds. The first was for non-payment of rent at this rate from May 1977. I will only note that the suit itself was filed nearly 14 years later as Regular Civil Suit No. 8 of 1992 in the Court of Joint Civil Judge Senior Division, Thane. The Plaintiff claims to have served a statutory notice dated 30th September 1991. I will quickly note that there was some controversy about service of this notice but in the impugned order the Appeal Court has held in favour of the Plaintiff/landlord on that aspect of the matter and, therefore, this aspect need not detain us.

5. The second ground was that the Defendant had made unauthorized alterations to the tenanted premises. Earlier the room or hut was made of reed walls (*'karvi kud'*) and the tenement was covered with tiles. According to the Plaintiff in August 1995 the Plaintiff constructed walls of brick and cement mortar and replaced the roof tiles with cement sheets. The landlord did not consent or grant permission; his permission was not even sought. It was alleged that this was in contravention of Section 13(1)(b) of the Bombay Rent Act.

6. For his part, the Defendant controverted these allegations. He said that he had been regular in paying rent to the Plaintiff, but it was the Plaintiff who did not issue any rent receipts. According to the Defendant rent was fully paid till August 1991. From September

1991 the Plaintiff demanded enhanced rate at the rate of Rs 50/- per month, i.e., twice the earlier rate and refused to accept the rent at the earlier rate. The Defendant also said that he did not receive any notice but for the present I will let that pass. The Defendant's case was that he paid Rs. 350/- as a deposit when the tenancy was created and a further amount of Rs. 700/- some time later in 1976.

7. As to the question of repairs, the Defendant said that he and other tenants had put the Plaintiff/landlord in funds to carry out the repairs. Whatever repairs were made were not till 1989. He did not dispute that he had erected brick masonry walls and replaced the roof tiles with cement sheets. He however said that the work was done by the Plaintiff and not by the Defendant.

8. The Trial Court framed six issues and ultimately decreed the suit. Each side examined itself and one other witness each. Before the Appeal Court five points for determination were framed. On the first, whether the Defendant failed to pay rent from May 1977, the Appeal Court held that the Plaintiff had not proved its case. The second point was in regard to service of notice. The third point was in regard to the permanent construction and here again the Appeal Court held in favour of the Defendant.

9. The Appellate Court arrived at its findings on a careful consideration of the evidence that was on record. On the question of non-payment of rent, the Appeal Court paid particular attention to the Plaintiff's evidence, especially in the form of a book of rent receipt counterfoils. It is not necessary to examine this in any great

detail. It is sufficient to note that the Appellate Court found that the Plaintiff's evidence was unreliable. The counterfoil book was irregular. There were no signatures of tenants. Most importantly the book apparently referred to a building called Radha Niwas and not the suit chawl or at any rate not only the suit premises. Before the Trial Court the Plaintiff sought to explain the discrepancy in dates, viz., that the counterfoils were not chronologically sequenced by saying that the tenants paid rent at different times. The Appellate Court quite correctly rejected this. It also found that there was only one rent receipt in the entire book in the name of the Defendant and one more in the name of another tenant. The Appellate Court was quite correct in saying that it remained unexplained why the Plaintiff kept quiet about this alleged non-payment for as long as 14 years, a matter on which there was no evidence whatsoever.

10. Passing over the question of service of the demand notice to the issue on permanent construction, as I have noted there is no dispute that the work was done. The Appellate Court relied upon a decision of this Court in *Alisaheb Abdul Latif Mulla v Abdul Karim Abdul Rahman*¹ for the proposition that merely because a wall was erected this would not be sufficient to found a ground of eviction if there was no change in the form of the structure itself. Improvements such as these for better enjoyment, the Court held, were permissible. In fairness it is not contended even today that the tenant had increased or altered the area of the tenanted premises. He had merely replaced one material for another for the walls and for the roof. Even as regards the construction, the Appellate Court

1 AIR 1981 Bom. 253.

found that there was an unexplained inaction from the Plaintiff for a period of six to seven years.

11. In a matter such as this a writ Court is not tasked with a re-appreciation of the evidence. What must be shown is that the order of the Appeal Court is so utterly perverse in law, i.e., is a view that could not possibly have been taken, and that a writ Court would be remiss if it did not exercise its extraordinary writ jurisdiction. From a close reading of the Appeal Court's judgment and the material that is available, it is not possible to arrive at any such finding in regard to that order. The view taken is certainly a plausible one on the material that was before the Appellate Court.

12. The impugned order calls for no interference. Rule is discharged. The petition is dismissed. There will be no order as to costs.

(G. S. PATEL, J)