IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.399 OF 2017

1. Sajid Malik & anr .... Applicants
vs
M/s NRB Bearings Ltd .. Respondent

Mr.Prasad Dhakephalkar Sr.Counsel with Jaydeep Deo for the Applicants
Ms.Asha M.Bhambwani for Respondent

Coram : G.S.KULKARNI, J.
Date : 21st DECEMBER, 2017

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Heard learned counsel for the parties. By this civil revision application, the applicants/tenants challenge the judgment and order dated 25 April 2017 passed by the appellate bench of the Small Causes Court, whereby the respondent's suit for eviction instituted principally on the ground of the applicants creating third party rights by unlawful sub-letting, stands allowed in the following terms :

"(1) Appeal is allowed with costs.

(2) The impugned order, judgment and decree is quashed and set aside and following order is passed:

(i) The suit is decreed with costs.

(ii) The respondent nos.1 and 2 do deliver jointly and severally quiet, vacant and peaceful possession of suit premises viz., premises bearing No.E on the ground floor, Dhannur, 15,Sir P.M.Road, Fort, Mumbai-400001 to the appellant company within three months from the date of passing of this order i.e. on or before 24.07.2017.

(iii) Decree be drawn up accordingly."

2. It is not in dispute that the respondent is the owner and landlord of a building known as Dhannur situated at 15,Sir P.M.Road, Fort, Mumbai. Applicant no.1 Sajid Malik was accepted as monthly tenant of the premises bearing No.E admeasuring 720 sq.ft (for short 'the suit premises') as applicant no.1 Sajid Malik had purchased running business of going concern M/s Mulchand and Sons with all assets and goodwill by deed of assignment dated 1 April 1992. The applicant no.1 on 18 June 1993 sought permission of the respondent-landlord to operate three companies from the suit premises being (1) M/s Phoenix Assets Management Pvt.Ltd (2) M/s Kerb Security Pvt.Ltd and (3) M/s Shyam Commercial Ltd (for short 'three companies'). These three companies were

permitted to be operated from the suit premises on the condition that these three companies will not claim tenancy rights in the suit premises and would vacate the suit premises as and when applicant no.1 Sajid Malik vacates the suit premises. It appears that M/s Shyam Commercial Ltd was renamed as M/s Ventura Guarantee Limited. However, this change in the name of M/s Shyam Commercial Ltd was not informed to the respondent-landlord and thus respondent was surprised to see some correspondence received in the name of M/s Ventura Guarantee Limited. Apart from this, the respondent noticed another name board on the suit premises bearing the name of Globus Capital Advisors and was informed that the firm was owned by Mr.Vipul Srivastav and not by applicant no.1. It is the respondent's case that the terms of tenancy in favour of applicant no.1 were clear as contained in the letter dated 18 June 1993 which was accepted by applicant no.2 by endorsement on the respondent's copy by which only the said three companies were permitted to be operated from the suit premises. The said three companies had individually furnished an undertaking on affidavit to the respondent forwarded under applicants covering letter dated 28 June 1993 wherein the applicants specifically agreed to comply with the terms of tenancy.

3. The respondent-landlord's case was that applicant no.1 having inducted third parties had committed breach of the express terms of tenancy violating the provisions of section 16 (1) (e) of the Maharashtra Rent Control Act, 1999 (for short “the Rent Act”) the respondent thus filed the eviction suit in question praying for eviction and peaceful possession of the suit premises. The applicants appeared and filed written statement. In paragraph 5 of the written statement in dealing with paragraph 2 of the plaint, the applicants denied that there was any board on the suit premises bearing name “Globus Capital Advisors”. The applicants stated that Mr.Vipul Srivastav is a friend of applicant no.1 and was appointed as financial advisor to the group companies of applicant no.1. It was stated that

the applicant no.1 was free to employ any person in his office and this would not amount to breach of the terms of tenancy. In the written statement, the applicant further stated that the change in the names of the companies is recorded by the Registrar of companies. In paragraph 6 of the written statement in dealing with paragraph 3 of the plaint, the applicant no.1 denied that any third party was inducted in the suit premises and/or there was a breach of the terms of tenancy and the provisions of section 16 (1) (e) of the Rent Act. In the oral evidence as adduced on behalf of respondent no.1 of Mr.Satish Chellaram Rangani, Company Secretary of respondent no.1, he categorically deposed in regard to third parties namely the other companies by name Ventura Commodities Pvt. Ltd, Ventura Securities Ltd, Securex Capital Market and Securex Capital Advisors (India) Ltd who were using the suit premises. Further the applicant no.1 examined himself on behalf of the defendants. In the cross examination, applicant no.1 stated that a company known as Ventura Securities Ltd was formed in the year 1995-96 and the name of this company is never changed. He also admitted that he was a director of Ventura Securities Ltd. He further categorically deposed in regard to the occupation of Ventura Securities Ltd. The following statement was made in the cross-examination. "*Today, I cannot say that we have not given intimation to the plaintiff company that Ventura Securities Ltd is occupying the suit premises*." He further stated that Ventura Security Ltd is a subsidiary of Ventura Guaranty Ltd and that it was not true to say that both the companies were totally separate companies. He also admitted that Director and shareholders of both the said companies were different. He further admitted that Ventura Commodities Pvt.Ltd is a separate company from Venture Guaranty Ltd.

4. The learned trial Judge considering the rival pleas and evidence as placed on record, however proceeded on the footing only on the change of nomenclature that is Shyam Commercial Ltd having changed to M/s Ventura Guarantee

Limited. He held that Ventura Securities Ltd was a subsidiary of defendant no.2-Ventura Guarantee Ltd. The learned trial Judge further observed that the electricity bills as well as telephone bill showed that the applicants were in use and occupation of the suit premises and they are operating the business and thus came to the conclusion that the appellants were in legal possession of the suit premises and that it was the applicant who was carrying on business in the name of three companies as permitted by the respondent-plaintiff. It is on this principal premise that the learned trial Judge dismissed the respondent's suit.

5. Being aggrieved by dismissal of the suit by the learned trial Judge, the respondent had approached the appellate Bench of the Small Causes Court. The appellate Court by the impugned judgment, on a careful appreciation of the oral and documentary evidence, has recorded a finding that there was clear evidence on record of the applicants' creating third party

rights. The appellate Bench in paragraph 31 to 33 has observed as under :-

> "31. So considering the aforesaid ratios, it cannot be said that either the pleadings in plaint was vague or fall short to constitute unlawful subletting i.e. by not mentioning the names of unlawful occupants, those four companies as names of those four companies were not mentioned in the plaint. Especially when both respondents, no where in their written statement, came up with a specific case that those four companies were sister concern companies or subsidiary companies of the respondent no.1 Ventura Guarantee Limited. Said fact about subsidiary companies only came to know when D.W.1 Sajid Malik adduced his evidence in his individual capacity (and not on behalf of respondent no.2 Ventura Guarantee Ltd). Moreover, D.W.1 Sajid Malik in his affidavit of examination-in-chief as Exh 29 dated 03.03.2009 for the fist time stated that those four companies i.e. Ventura Commodities Pvt.Ltd Ventura Secuerities Ltd, Securex Capital Advisors (I) Ltd and Securex Capital Markets Ltd had nexus with him as he took the stand that those four companies were his subsidiary or sister concern companies. However, surprisingly no documentary evidence in support of said contention adduced or tendered by him along with affidavit of his examination-in-chief.
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> 32. So far as written statement of both the respondents is concerned, it ought to have averred in the written statement hat those four companies were either subsidiary companies or sister concern companies of the respondent no.2. Thus, such important pleading about subsidiary companies is missing from the written statement so as to consider the stand taken about subsidiary companies when both the respondents filed their joint written statement. By not pleading so, it is very difficult to accept the contentions that, those four companies were subsidiary companies of the respondent no.2 Ventura Guaranty Limited. It is also worthy to note that nobody was examined on behalf of respondent no.2 Ventura Guaranty Limited stating that those four companies were subsidiary companies of the respondent no.2 Ventura Guaranty Limited. It goes to the root of the matter.
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> 33. Further according to both respondents, Mr.Sajid Malik is Managing Director of respondent no.2 Ventura Guaranty Limited. It being so, the joint written statement filed on behalf of both the companies is not signed by the respondent no.1 tenant Mr.Sajid Malik in his dual capacity as a tenant as well as in the

capacity of Managing Director of respondent no.2. Especially when Sajid Malik himself only examined as D.W.1 in his individual capacity on behalf of respondent no.1/tenant and not on behalf of respondent no.2. Ventura Guaranty Limited, when he could do so easily so as to refute the allegations about unlawful subletting to those four companies. In these circumstances, though there is written statement filed on behalf of respondent no.2 Ventura Guarantee Limited, however, by not examining anybody on behalf of respondent no.2-Ventura Guarantee Limited. Therefore, it was not at all proved that those four companies were subsidiary companies of Ventura Guaranty Ltd. Not a single document was placed on record to infer. So, respondent no.2 could be able to produce the documentary evidence like Muster, wage register,employee register,balance sheet and books of account were filed so as to prove the stand of those four companies were either sister concern companies or subsidiary companies. By not adducing cogent, reliable and trustworthy evidence, it is our considered opinion that, both the respondents failed to rebut the interference about the unlawful subletting."

6. The appellate Court accordingly allowed the respondent's appeal by decreeing the respondent's suit as noted above.

7. Learned Senior Counsel for the applicants in assailing the findings of the appellate Bench, submitted that the case of the applicants before the Courts below was principally on the basis of change of nomenclature of Shyam Commercial Ltd to M/s Ventura Guaranty Limited-applicant no.2. It is submitted that therefore, there was no question of any

subletting. As regards the occupation by the other companies namely Ventura Commodities Pvt.Ltd, Ventura Securities Ltd, Securex Capital Market and Securex Capital Advisors (India) Ltd, it was submitted that the said companies were subsidiaries and sister concerns of the company, though no documentary evidence in that regard was placed before the trial Court. Learned Senior Counsel, however could not justify that these companies even if they are subsidiary companies would have independent legal existence and that these companies also had separate business activities. Further, the learned Senior counsel for the applicant is also not in a position to justify as to under what legal authority/basis these parties are occupying the suit premises, the occupation of whom was conceded by applicant no.1 in the examination-in-chief. Learned Senior Counsel for the applicants, however, tried to justify that the occupation of the premises by these companies being subsidiaries and sister concern, are required to be accepted as legal and the findings of the appellate Court in that regard are not justified. He accordingly, prayed that the application needs to be succeeded.

8. On the other hand, learned counsel for the respondent-landlord has drawn my attention to the specific evidence as adduced on behalf of the applicants and part of the record before the Courts below, where a vague picture is sought to be painted to show that the said companies are not in occupation of the suit premises. My attention is also drawn to the certificate of the company Secretary dated 19th February 2005 which was a document on record before the Courts below addressed to the respondent-plaintiff, in regard to the inspection and search of the record of Ventura Securities Limited at the Office of the Registrar of Companies, which revealed the following information in regard to the name and registration number of the company, date of incorporation, registered office and shareholding pattern:

Name & Registration No. of the Company	VENTURA SECURITIES LIMITED REGN NO.11-82048

Date of Incorporation	14th October, 1994
Registered Office	Dhannur, Ground Floor 15,Sir P.M.Road, Fort **(Suit Premises)** {C} Mumbai-400001 Tel No.22660969

Details of Shareholders :-

Name of Shareholders	No. of Shares
1.Ventura Guaranty Ltd	48,99,090 Equity shares
2.Sajid Malik	10 equity Shares

My attention is also drawn to similar search as undertaken in respect of the Company– Ventura Commodities Pvt.Ltd which reads thus:

Name & Registration No. of company	VENTURA COMMODITIES PVT.LTD (formerly known as ACE Asset Advisors Pvt.Ltd) REGN NO.U74999 MH 2002 PTC 135565
Date of Incorporation	19th April 2002
Registered Office	Dhannur, Ground Floor, 15,Sir P.M.Road, Fort Mumbai-400001 **(Suit Premises)**

Name & Address of Director	Date of Appointment	Dt.of Registration
Hemani Majethia Dharmakshetra,7 Vatcharaj Lane, Matunga (Cr) Mumbai-400019	19.4.2002	……….

9. As clearly seen from the evidence as placed on record in regard to the occupation of third party namely Ventura Securities Ltd and Ventura Commodities Pvt.Ltd of the suit premises. In my opinion, there is no perversity in the findings as arrived at by the appellate Court in reaching to the conclusion that the evidence on record unequivocally went to show that the applicants had created third party rights in the suit premises by permitting the business of these third parties to be conducted from the suit premises. The findings are recorded are on the basis of plentiful evidence documentary and oral. Learned Senior Counsel for the applicants was not in a position to displace the said findings as recorded on evidence nor an attempt was made on behalf of the applicants to annex to the paper book the relevant material which has been tendered in the separate compilation by the respondent-landlord.

10. In the circumstances aforesaid, I find that there is no jurisdictional error or any material irregularity in the

appellate Court decreeing the respondent's suit.

11. The revision application is accordingly devoid of merits. It is accordingly rejected. No costs.

12. The applicants shall hand over the possession of the suit premises to the respondent within a period of six weeks from today.

(G.S.Kulkarni, J)