

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION NO. 16 OF 2017
IN
APPEAL AGAINST ORDER NO. 291 OF 2014
IN
SUIT NO. 6319 OF 2005

MS Shetty & Anr	...Petitioners
<i>Versus</i>	
Anoop Vyas & Ors	...Respondents

Mr GS Godbole, *a/w Naina Desai, i/b SK Jain, for the Petitioners.*
Mr Harinder Toor, *a/w NN Amin & Sumedha Sawant, for*
Respondents Nos.7, 8 & 9.

CORAM: G.S. PATEL, J
DATED: 29th November 2017

PC:-

1. Heard.

2. Mr Godbole points out that there are three portions of the order and judgment dated 31st July 2017 that are the subject matter of this review.

3. Having heard him, I believe that the portions to which he points require at best a clarification lest they be misconstrued, although there is, in my view, no ground for a review properly so-called within the meaning of Section 114 or Order 47 of the Code of Civil Procedure 1908.

4. Paragraph 16 of that order (page 21 of the paper book) said:

"16. For the appellants, the original plaintiffs, Mr Godbole's quarrel is not so much with the finding of tenancy returned as with the frame of the final order.

This is not to be understood to mean that Mr Godbole or his client accept the finding. All that was intended to be conveyed was that Mr Godbole did not at that time dispute that the City Civil Court could, while determining its jurisdiction, arrive at such a finding. This, I think, is sufficient clarification in regard to paragraph 16.

5. Coming to paragraph 23 this relates to the preceding paragraph where I cited the decision of this Court in *Smita Rajeev Sah v Roop Narain Sah*.¹ Then in paragraph 23, I said the present case differs from *Smita Rajeev Sah* only in this particular, viz., that there is an admission of a gratuitous license, and there is a finding of the existence of a tenancy. Again, this should not be misunderstood. The mention of a gratuitous license was a reference to the facts in *Smita Rajeev Sah* and not in the present case.

1 2013 SCC OnLine Bom 474: (2013) 5 Mah LJ 211: (2013) 6 Bom CR 193.

6. Finally there is the observation in paragraphs 24 and 26 which have to be read together:

"24. For this reason, prayers (a) and (b) of the suit can only be within the remit of the City Civil Court. Only prayer clause (c), seeking a decree of possession against the defendants would be outside the jurisdiction of the City Civil court and within the exclusive jurisdiction of the Small Causes Court, now that there is a finding, after evidence, of the existence of a tenancy in favour of those defendants against whom the decree of possession is sought.

26. The Appeal is therefore allowed. The impugned order is set aside. It will not be necessary for the Trial Court to re-appreciate the evidence in regard to the tenancy, and the previous findings may be accepted, since I have not addressed these at all, but confined myself to the frame of the final order. Having regard to the provisions of Section 34 of the Specific Relief Act, 1963 and its proviso, and the stand of the defendants in relation to the plaintiffs' claim of title, it will be for the City Civil Court to determine whether the suit is to be dismissed wholly or only in regard to prayer clause (c)."

The second sentence in paragraph 24 is not to be construed to mean that Mr Godbole had accepted the existence of the tenancy or that I have while hearing this matter finally confirmed such a finding. To recap, the City Civil Court arrived at a *prima facie* finding in regard to the tenancy sufficient to conclude that it did not have jurisdiction to pass an order directing delivery of possession. It ends at that. Whether or not there is in fact a landlord-tenant relationship and whether the Plaintiffs are entitled to a decree in eviction and possession is a matter that is squarely and solely within the remit of the Court of Small Causes at Mumbai.

7. The third sentence of paragraph 26 may require some clarification. I do not believe that I could have directed the Trial Court to proceed with the evidence already led before the City Civil Court. Clearly, to this extent Mr Godbole is correct. The evidence taken before the City Civil Court on a jurisdictional aspect cannot bind the Rent Court and both sides must be set at complete liberty to lead such evidence as they deem fit. Having regard to the fact that extensive evidence was led it will be for the Trial Court to decide on an application made by either of the party what portion of the evidence previously recorded can permissibly and in consonance in law including the Evidence Act, be read into the trial before the Small Causes Court, should that occasion arise. All contentions in that behalf will necessarily have to be kept open.

8. The Review Petition is disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J.)