

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.1086 OF 2014

Mr.Machindra B. Chavan ..Applicant
V/s.
Maharashtra Gandhi Smarak Nidhi
Trust & Ors. ..Respondents

Mr.Niranjan Mogre i/b Mr.Ravi Shinde for the Petitioner.

Mr.S. Deshmukh for Respondent Nos.1 & 2.

CORAM : M. S. SONAK, J.

DATE : 5 OCTOBER 2017.

P.C. :

1. Heard Mr.Niranjan Mogre i/by Mr.Ravi Shinde for the applicant and Mr.S. Deshmukh for Respondent Nos.1 & 2.

2. The challenge in this application is to the orders dated 28.03.2013 and 05.08.2014 made by the Trial Court and the Appeal Court ordering eviction of the petitioner on the ground of default in payment of rents and *bona fide* requirement of the respondent-trust.

3. Mr.Niranjan Mogre, learned counsel for the

applicant submits that suit for eviction had been instituted by Maharashtra Gandhi Samark Nidhi (MGSN) claiming to be the landlord of the suit premises. He however points out that Dr.Kumar Saptarshi, Chair Person of the Trust (PW-1) in his deposition clearly admitted that he does not have any document to show that the suit property is owned by the MGSN. Mr.Mogre points out that this witness had infact agreed to produce documents at a later stage, however, such documents, were never produced. Mr.Mogre submits that the material on record suggests that Gandhi Samark Nidhi is different and distinct from MGSN, the plaintiff in the suit. Mr.Mogre submits that from it is clear that the plaintiff had no *locus sandi* to institute the suit for eviction and in any case there was no landlord-tenant relationship between the plaintiff and defendant. On this ground itself, the impugned eviction decrees are liable to be set aside.

4. Mr.Mogre submits that although it is true that the petitioner did not file his written statement or step into the witness box, it is settled position in law that the plaintiff has to

stand or fall on his own feet. The plaintiff cannot take advantage of any alleged weakness in the defendants case. Mr.Mogre submits that since the Trial Court and Appeal Court have ignored these basic principles, the impugned eviction decrees are liable to be set aside.

5. Mr.Mogre also submits that the provisions of Section 109 or 116 of the Evidence Act, 1872 were not at all attracted to the facts and circumstances of the present case. He submits that only after the plaintiff establishes that the defendant had accepted such plaintiff as the landlord or was paying rents to the plaintiff, can, any issue of estoppel arise. In this case, since, the plaintiff has failed to establish these aspects, there was no question of issuing decrees of eviction in favour of such plaintiff by resort to the provisions of Section 109 and 116 of the Evidence Act, 1872.

6. Mr.Deshmukh, the learned counsel for respondent Nos.1 and 2 (landlord) submits that the applicant is misconstruing the deposition of PW-1. Mr.Deshmukh submits

that in this case, the petitioner neither filed any written statement nor did he examine himself in the proceedings. In the absence of written statement, the two Courts were entitled to proceed on the basis that the landlord-tenant relationship between the parties was admitted.

7. Even otherwise, Mr.Deshmukh submits that there is material on record to demonstrate that the petitioner was paying rents to the plaintiff and the petitioner committed defaults in payment of such rents from 01st april 2007. Mr.Deshmukh submits that there were some disputes between MGSN and Gandhi Samark Nidhi. However, such disputes, have been resolved in favour of MGSN by order of the Hon'ble Supreme Court dated 08.11.2016 made in Civil Appeal Nos.10743-10744 of 2016.

8. Mr.Deshmukh again submits that the plaintiff was not only the landlord of the suit premises but also the owner of the suit premises. He submits that there is absolutely no error of jurisdiction in the impugned orders. He also submits that

the findings of fact concurrently recorded by the two Courts are not vitiated by perversity. Therefore, he submits that this petition may be dismissed with costs.

9. Rival contentions now fall for my determination.

10. The plaintiff, MGSN, in the plaint has very clearly stated that it is the landlord in respect of the suit premises of which, the petitioner, was a monthly tenant. In the plaint, it was further pleaded that the petitioner was not regularly paying arrears of rent of Rs.1,500/- per month and was in arrears since 01st April 2007. It is further pleaded that on 25-04-2010 a demand notice was issued to the petitioner through advocate Mr.N.V. Akolkar and the same was returned as “not claimed”.

11. The petitioner despite service, chose not to file any written statement in the matter. This means that the averments in the plaint were deemed to be admitted by the petitioner. The two Courts have rightly held that in the

absence of written statement, the petitioner, was not entitled to question the existence of landlord-tenant relationship or to contend that MGSN was neither the owner nor the landlord in respect of the suit premises. There is no error of jurisdiction or perversity in the findings recorded by the two Courts or the approach of the two Courts.

12. There is a distinction between a person claiming to be a landlord of the suit property and owner of the suit property for the purpose of proceedings under the Rent Act what is relevant is whether the plaintiff who seeks eviction is the 'landlord' not owner of the suit premises. Therefore, even assuming that PW-1 was unable to produce documents on record to establish that MGSN was indeed the owner of the suit premises, that by itself, does not detract from the circumstances that MGSN was the landlord in respect of the suit premises.

13. Besides, the deposition of PW-1 has to be construed in its entirety. The deposition, at the highest, suggests that the witness, at the time of deposition, did not have the document

to establish that MGSN was indeed the owner of the suit premises. However, that does not mean that the MGSN was not the landlord of the suit premises or that it lacks *locus standi* to institute the eviction proceedings.

14. The statement in the plaint that MGSN was the landlord in the suit premises and the petitioner was the monthly tenant was not even denied by the petitioner by filing any written statement. There is no dispute about the proposition that the plaintiff has to stand or fall on his own feet. However, in this case, the plaintiff MGSN need not even have led any evidence on the aspect of landlord-tenant relationship, since this aspect was deemed to be admitted by the petitioner, who chose not to even file a written statement to dispute such averments in the plaint.

15. In this case, there is material on record that the parties have been acting as landlords and tenant with each other. In such circumstances, the provisions of Section 109 of the Evidence Act were attracted and the onus was upon the

petitioner to show that he was not at all the tenant of the suit premises of which, MGSN was the landlord. The petitioner, by not filing a written statement has failed to explain the capacity in which he occupies the suit premises. Even in the course of cross-examination, no suggestions have been put to explain the capacity in which the petitioner occupies the suit premises. On the other hand, the MGSN, has pleaded a positive case of landlord-tenant relationship, which positive case, was never denied by the respondent by filing written statement.

16. Section 116 of the Evidence Act provides that no tenant of immovable property can be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property. This is a special principle of estoppel applicable as between landlords and tenants. There is no jurisdictional error on the part of the Appeal Court in invoking the provisions of Section 116 of the Evidence Act to the facts and circumstances of the present case.

17. Upon cumulative consideration of the aforesaid circumstances, there is no case made out to interfere with the

impugned orders in the exercise of extraordinary jurisdiction under Article 227 of the Constitution of India. This petition is therefore dismissed. Interim order, if any, is vacated. There shall be no order as to costs.

18. The amounts deposited by the petitioner in pursuance of the orders made by this Court to be transferred to the Small Causes Court, Pune. The amounts shall abide by orders which shall be made by the Small Causes Court in the inquiry for determination of mesne profit, which is said to be pending.

19] At this stage, Mr. Mogre applies for extension of interim reliefs, which is already in operation for a further period of eight weeks. Subject to the applicant, filing the usual undertaking in this Court within a period of two weeks from today, the interim order granted earlier shall operate for a period of eight weeks from today.

(M. S. SONAK, J.)