

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 602 OF 2017
WITH
CIVIL APPLICATION NO. 393 OF 2017

Rukmani Ramchand Malkani (Deceased)	
Chandru Wadhwa	...Applicant
<i>Versus</i>	
Kakad Housing Corporation	...Respondent

Mr Nisha Mehra, i/b Praful S Pawar, for the Applicant.
Mr Mayur Khandeparkar, a/w Ms Heena Chheda & Bharatkumar
Jain, i/b M/s Hariani & Co, for the Respondent.

CORAM: G.S. PATEL, J
DATED: 13th November 2017

PC:-

1. The Civil Revision Application is directed an appellate order dated 11th August 2017 of the Appellate Bench at the Small Causes Court, Mumbai. The Appellant is the original Defendant and the Respondent is the original Plaintiff. The Plaintiff's ejectment suit was decreed on 9th August 2011. It directed the delivery of possession of Flat No.4-A, 4th floor, Fazalbhoy House, 11 New Marine Lines, Bombay 400 020.

2. The Plaintiff landlord said that one Kala Chandiramani used to be the monthly tenant of the Plaintiff in respect of these premises. She died sometime in September or October 2006. The Defendant Rukmani claimed to be Kala's sister and heir and legal representative.

3. The Defendant in her written statement raised a plea *inter alia* of jurisdiction. She denied the landlord-tenant relationship. She accepted that Kala was the tenant but then claimed that all tenants of the premises, including Kala, became members of the Defendant society. Before the Trial Court and again in Appeal, there was a long narrative of the litigation history in which Kala tried to claim membership of the society. The matter was carried all the way to the Supreme Court and ultimately was remanded. Finally that litigation ended in an order in Writ Petition 3507 of 1995 filed by the society. That order quite clearly said that Kala could not be admitted to the membership of the society and a revision allowing membership was unsustainable. The result was that Kala herself did not acquire membership of the society. The Defendant had no independent right to membership. There was no evidence before either of the Courts of any sale or purchase transaction, or of consideration paid.

4. There remained question of non-user, the ground on which eviction was sought, and here the Defendant said that for several months she was staying with her brother who was unwell. She then said that her brother had disposed of his flat and was now staying with her in the suit premises. Interestingly, it was the Defendant who relied on electricity bills to show continued use. Two things are

significant. First, there was no evidence before the Trial Court of any illness of the brother at all. Second, the electricity bills adduced in evidence by the Defendant did not show use. Far from it. These showed consumption of 56 units, 17 units, 1 unit and 0 units and bills of utterly negligent amounts. It is a pointless argument that the Defendant was thrifty in her electricity consumption. There is a distinction between being cautious about power consumption and not using it at all.

5. Ultimately, this is a Civil Revision Application and it must fall within the frame of Section 115 of the Code of Civil Procedure 1908. The Applicant must therefore show either a jurisdictional error of the Court below or that there was a material irregularity or perversity. I am able to find none. There is no merit in the Civil Revision Application. It is dismissed. There will be no order as to costs.

(G. S. PATEL, J)