

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

CIVIL REVISION APPLICATION NO. 652 OF 2016

Panchalal Tejiram Yadav

...Applicant

Versus

Suman Ramesh Sawant

...Respondent

Mr. N.S. Dube, for the Applicant.

Ms. Preeti Walimbe, i/b Mr. Bhushan Walimbe, for the Respondent.

CORAM : N.M. JAMDAR, J.

DATE : 2 February 2017

ORAL ORDER :

1. By this Revision Application, the Applicant has challenged the judgment and orders passed by the learned Civil Judge, Kalyan and the learned District Judge, Kalyan decreeing the Suit filed by the Respondent-landlord and directing the Applicant to handover possession of the suit premises.

2. The Suit bearing No. 59 of 2006 was filed by the Respondent-landlord to recover the possession of the suit property from the Applicant. The suit property is, Shop No. 8 on

the Ground Floor in Building known as “Avadhut Chintan”, situated at Rajaji Path, Ramnagar, Dombivli (E), Tal. Kalyan Dist. Thane. It was the case of the Respondent that the Applicant carried out certain permanent constructions without permission of the Respondent-landlord caused damage to the suit property, sublet the suit premises, changed the user and committed nuisance. The Suit was also filed on the ground that the premises were required for bona fide and personal use of the Respondent-landlord. The Applicant filed the Written Statement and contested the Suit. The learned Civil Judge held that the ground of subletting and non user were not proved by the Respondent-landlord neither the personal and bona fide requirement of the Respondent-landlord. The Civil Judge, however, held in favour of the Respondent-landlord on the ground of permanent construction and nuisance caused by the Applicant. The suit was decreed by Judgment and Order dated 18 August 2016. The Appeal was filed by the Applicant bearing No. 139 of 2010 in District Court, Kalyan. The Appeal was dismissed by the learned District Judge by judgment and order dated 18 August 2016. Hence, this Revision.

3. Heard learned Counsel for the parties.

4. The learned Counsel for the Applicant submitted that as far as the decree on the ground of permanent construction is concerned, both the Courts have held that the Applicant has not

carried out the construction of the shed and the only ground against the Applicant is regarding a mezzanine floor. He submitted that the mezzanine floor was in existence when the premises were let out which is borne out from the tenancy agreement between the parties. He submitted that the evidence has not been properly appreciated by both the Courts regarding the existence of the mezzanine floor.

5. I have considered the contentions. The existence of mezzanine floor *per se* is not in dispute. The contention of the Applicant is that the mezzanine floor was a part of the suit premises when they were let out to the Applicant. This would be essentially a question of fact. Question is whether this finding of fact rendered by both the Courts can be considered as perverse. The parties have executed a detailed agreement of tenancy. The suit premises have been meticulously identified and various terms and conditions have been provided. A perusal of the Agreement shows that the premises were let out after construction, for which some amount was contributed by the Applicant to be adjusted in rent, as per the layout sanctioned by the Municipal Corporation. It is also on record that the building has various other such shop premises. Such otherwise detail agreement does not specify existence of mezzanine floor. Since a shop in newly constructed premises was given to the Applicant, it was open to the Applicant to demonstrate that all the identical situated shops had such mezzanine floor or to produce a Plan to

show existence of mezzanine floor. It is specifically stated in the agreements that the shop premises have been constructed as per the sanctioned Plan. No such evidence is produced on record. Both the Courts have taken note of the admission of the Applicant that he had purchased a staircase for the mezzanine floor and had drawn a conclusion that if the mezzanine floor was in existence, there was no requirement to buy a staircase later on. This being an evidence on record, which was appreciated, it cannot be said that the conclusion drawn that the mezzanine floor was not in existence when premises were let out and was constructed by the Applicant, was a perverse conclusion.

6. As far as the ground of nuisance is concerned, the learned Counsel for the Applicant submitted that the Respondent-landlord made various complaints after institution of the Suit pursuant to which the officers visited and have deposed and therefore, their evidence cannot be looked at. He submitted that the Applicant has not been convicted of any of the breach as, which is the requirement of the Maharashtra Rent Control Act, 1999.

7. These submissions also cannot be accepted. The learned Civil Judge in the judgment has reproduced the lists of complaints made, which will show that majority of the complaints were made between years 2003 to 2005. The Suit

was instituted on 15 February 2006. Thereafter, some complaints have been filed. However, the fact remains that even before filing the Suit, complaints have been made. The Respondent-Plaintiff examined various officers of different departments who have deposed as regards the nuisance committed by the Applicant. They have deposed regarding fire hazards and the blockage of drainage due to the activities of the Applicant. The conviction of a tenant is not a prerequisite to demonstrate that the conduct is causing nuisance to the landlord and the neighbours. This finding of fact has been rendered by both the Courts after taking into consideration the evidence of the officers, who are independent witnesses. Therefore, even on this count, no error can be found in the approach adopted by both the Courts.

8. In the circumstances, no interference is warranted in the revisional jurisdiction. The Revision Application is rejected.

9. The learned Counsel for the Applicant seeks protection from execution of the decree for some time. The learned Counsel for the Respondent states, on instructions, that it is not necessary to grant any protection, as for as at least six weeks, the execution proceedings are not in contemplation. This statement is accepted.

[N.M. JAMDAR, J.]