

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 611 OF 2016
WITH
CIVIL APPLICATION NO. 770 OF 2016**

Balwinder Singh Harbans Singh Sandhu ...Applicants
Versus
Kaikhushru Dinshaw Modi & Ors ...Respondent

**AND
CIVIL REVISION APPLICATION NO. 612 OF 2016
WITH
CIVIL APPLICATION NO. 771 OF 2016**

Shaikh Mainuddin Azmi ...Applicants
Versus
Kaikhushru Dinshaw Modi & Ors ...Respondent

Mrs Anita Wasani, *i/b Omprakash Pandey, for the Applicants in both the CRAs.*
Mr Milind Sathaye, *for Respondent No. 4 in both CRAs.*

CORAM: G.S. PATEL, J
DATED: 27th November 2017

PC:-

1. Heard.

2. The two civil revision applications are by different Defendants against a common order and judgment dated 30th July 2015 of the District Court at Nashik dismissing Regular Civil Appeal No. 407 of 2001 filed by these Defendants amongst others. One of the original Defendant, in the meantime, surrendered possession and stands deleted. The Appeal was against the judgment and decree dated 23rd August 2001 in Regular Civil Suit No. 20 of 1988, made by the 3rd Joint Civil Judge Junior Division.

3. In the Appeal Court, Respondents Nos. 1 to 6 were the Plaintiffs – landlords. They said that one Kaikhushru Dinshaw Modi approached one of them on 29th July 1963 and that there then followed a lease between the landlord(s) and Modi of open land of 100 feet x 140 feet in Survey No. 422 (C) at Deolali, Taluka Nashik in favour of Modi. The Plaintiff claimed they have executed this lease and that it was given to Modi for running an automobile garage but without the authority to sublet. It is this that lies at the heart of this dispute.

4. It was alleged that on 24th June 1987, Modi surrendered possession of a portion of this land, some 30 feet x 90 feet. He is said to have executed a possession receipt. The Plaintiff said that in violation of the terms of the demise to him, Modi had by then sublet the remainder of the original demised land to the Defendants sought to be ejected, and this was illegal. There were other allegations against Modi of being in arrears of rent and in default, and that on

these two principal grounds the Plaintiffs were entitled to a decree of possession.

5. Modi entered a written statement. He resisted the suit. He contended that the original lease was of open land and that he thereafter constructed a building on it and handed over parts of it to some of those who were later Appellants before the Appeal Court, i.e., the Defendants from whom possession was sought. Modi said that these occupants were licensees. He agreed that he had surrendered possession of 30 ft x 90 ft area in 1987 but claimed that he was forced into executing this. He denied all allegations of subletting. He also denied that the others in occupation of the structure were sub-tenants but said they were licensees that he has inducted.

6. Some of the Defendants also opposed the suit and entered written statements. They too said they were licensees and they argued that there was an “implied permission” to hand over the structure to them for running their business. They denied that they were sub-tenants. They claimed that since they were in occupation prior to 1st February 1973, they were protected under Sections 15 and 15A of the Bombay Rent Act 1947.

7. On these fundamental pleadings, the Trial Court struck issues. It took evidence. It ultimately decreed the suit, finding that Modi had committed breach of the terms of the lease; that he had unlawfully sublet the premises to the other Defendants between 1967 and 1986; that the Defendants were not licensees but were

illegal inducted tenants and therefore not protected by Sections 15 and 15A of the Rent Act; and that the Defendants resisting a possession decree were not protected under the Rent Act.

8. This decree was challenged and it was argued before the Appeal Court that there was a specific clause by which the Modi was allowed to sublet the premises “for doing ancillary business connected with his motor garage business”. The second contention before the Appeal Court was that the Defendants were entitled to protection having been in occupation as licensees prior to 1st February 1973.

9. The Appeal Court re-examined the evidence in its entirety. It framed three principle points for determination. The first of these was whether Modi committed breach of the lease deed by unlawfully subletting the demised premises; the Appellate Court held that he did. The second was whether the Appellants/Defendants were protected under Sections 15 and 15A of the Bombay Rent Act 1947 and here the Appeal Court held they were not. Third, whether the impugned Trial Court decree was legal and correct and here the Trial Court held that it was.

10. The reasons are set out starting from paragraph 9 of the impugned order. It was most strenuously argued before the Appeal Court that the lease deed allowed subletting for ancillary business and that the words “other business” implied the right to lease the land for business connected with the motor garage. The ancillary

works such as carpentry, welding, painting, wiring and a blacksmith unit were said to be “connected businesses”.

11. It was pointed out that the Defendants initially claimed to be licensees. Modi said he himself constructed the structures on the demised land and that it was he who inducted the other Defendants as licensees. Initially there was no contention that the Defendants were licensees of the open land but their claim was restricted to the portions of structure constructed by Modi. This raised the question of dual ownership of land and structure and the Appeal Court addressed this with sufficient care between paragraphs 11 and 16. It took into account the settled law on the subject.

12. As to the question of protection under Sections 15 and 15A, even this was thoroughly examined both on law and on facts. I may also note that before the Trial Court the Defendants themselves were noted to have said that they had filed receipts executed by Modi in their favour. These were marked in evidence. All of these used the word “rent”, thus, completely destroying the Appellants’ case of being licensees. Indeed other than showing that there were some other documents that did not use the word rent or compensation, there was nothing at all to indicate that the appellants were ever licensees and, therefore, within the ambit of Sections 15 and 15A of the Bombay Rent Act 1947.

13. Now it is argued that the very demise to Modi was forged, fabricated, and null and void. But surely this is self-defeating. If Modi had no lease, then there could have been no question of

permissible sub-letting, or of the appellants being licensees protected under the Act. The submission is only to be stated to be rejected.

14. Unfortunately, these civil revision applications, originally filed as writ petitions, overlook the constraints of Section 115 of the Code of Civil Procedure 1908. It is not possible to re-appreciate the evidence. It must be demonstrated that there is a material irregularity, a jurisdictional error or such perversity as would make inevitable interference by this Court. If none of these are shown then no relief can be granted.

15. Both the civil revision applications are rejected. There will be no order as to costs.

16. All civil applications are infructuous and are disposed of as such.

17. The Appellants agree and undertake to deliver the vacant and peaceful possession within eight weeks from today. The undertaking is accepted as an undertaking to the Court.

(G. S. PATEL, J)