

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11935 OF 2017**

Hiralal Govind Sonkavade	...Petitioner
<i>Versus</i>	
Gaurabai Baburao Aljapurkar & Ors	...Respondents

**Mr Vineet Naik, Senior Advocate, i/b IM Khairdi, for the
Petitioner.**

Mr Surel S Shah, for the Respondents.

**CORAM: G.S. PATEL, J
DATED: 16th November 2017**

PC:-

1. Heard. I have adjourned this matter twice before to enable Mr Naik to take instructions. He submits today that his instructions are to press the Writ Petition.

2. It is directed against an order of 17th October 2016 of the District Judge-3 at Solapur in a Regular Civil Appeal No. 253 of 2008 filed by the present Petitioner, original Defendant No.3A. The appellate order dismissed the Petitioner's appeal with costs. The Appellant is the heir of the original Defendant No.3. Respondent No.1 is the original Plaintiff and original Respondents Nos.2 and 3 were the original Defendants Nos.1 and 2. Respondents Nos.4A to 4D are the

other legal heirs of Defendant No.3 and Respondent No.5 is the married daughter of original Defendant No.3.

3. The Plaintiff sought *inter alia* possession on the ground of arrears of rent. The property in question is CS No.8674, House No.130. There is a shop on the ground floor and this is described in paragraph 1 of the plaint. This property was rented to Defendant No.1 to run a cloth business. The Plaintiff claimed that the 1st Defendant closed this business and started another shop elsewhere and that he illegally and unauthorisedly sub-let the cloth shop to Defendant No.2. The Plaintiff gave notice on 31st May 1974 terminating the 1st Defendant's tenancy. The 1st Defendant did not comply with demand for possession and resisted the suit. It seems that the plaint was amended and in the amended plaint the Plaintiff said that the 1st Defendant had evicted the 2nd Defendant and that the property was sub-let without the Plaintiff's consent to one Himmatlal Gandhi. The 1st Defendant received considerable rent. The 1st Defendant then evicted Himmatlal and inducted the original Defendant No.3. The 1st Defendant was thus profiteering by sub-letting the premises. The present business being carried on was in the name of M/s Feather Touch Cushion Works. Defendants Nos.1 and 2 filed their written statements. They denied the claim of the Plaintiffs. They accepted that the property was taken on rent but they denied the allegations of subletting. Defendant No.2 said that he had no connection with the property and Defendant No.1 denied that he had sub-let the premises. Defendant No.3 was joined later as a party Defendant and the matter proceeded *ex parte* against him. On his death, his heirs were impleaded and Defendant No.3A, the present Petitioner filed a written statement and an additional written statement. Defendant No.3B also entered a

written statement. They denied the claim of the Plaintiff. It is they who said that Defendant No.1 and the original Defendant No.3 amongst others had agreed to run this Feather Touch Cushion business before 1975. They did so on the basis of some oral understanding. One of the partners retired in 1984. The partnership was ultimately terminated in 1987 and there was something called an oral dissolution and arrangement. The case of Defendant No.3A was thus that there was a partnership between Defendants Nos.1 and 3 and that Defendant No.3 was a lawful tenant. He claimed that the Plaintiff had authorised the predecessors of the present Defendants to continue the business in partnership.

4. Before the Trial Court Defendant No.3A examined himself. The suit was remanded for the evidence of Defendant No.3 and on remand was directed to be heard on the limited point of the original 3rd Defendant's evidence. The decree against Defendants Nos.1 and 2 was confirmed even up to this Court.

5. The Appellate Court found that in cross-examination Defendant No.3A admitted that the property was given to his father in 1976 but that there was no written agreement between the 1st Defendant, with whom he claimed partnership, and his father, original Defendant No.3. He admitted that Defendant No.1 was not presently a partner. Interestingly, Defendant No.1 did not say in his written statement that there was a partnership with original Defendant No.3. Consequently, the Appellate Court held that the possession of Defendant No.3 (and therefore Defendant No.3A) was not in his capacity as a tenant but what the record indicated was that the 1st Defendant had initially inducted the 2nd Defendant, taken back possession from the 2nd

Defendant, and then proceeded to put the 3rd Defendant into possession as a sub-tenant. There was no evidence before the Court of this so-called partnership. The Appellate Court found that, if anything, there was a camouflage to avoid execution of the decree. It was in these circumstances that the Appeal was dismissed.

6. In a Writ Petition that assails these findings it is not possible to re-appreciate the evidence. What must be demonstrated is that there is a facial illegality or material irregularity in the impugned order; or that it can be shown from on the material on record that the order is 'perverse', that is to say it returns a finding wholly untenable, one that could not have been reached.

7. It is not possible to arrive at any such conclusion.

8. There is no merit in the Writ Petition. It is rejected. There will be no order as to costs.

(G. S. PATEL, J.)