

Sequeira

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

CIVIL REVISION APPLICATION NO.685 OF 2016

Smt.Shahbegum Kasamali Samnani
(since deceased) through L.R.s. & ors. .. Applicants

Vs

1. Smt.Ratanbai Shambhulal Hariani
(died)
2. Harish Shambhulal Hariani. .. Respondents

Mr.G.S.Godbole i/b Parag Tilak and Ulka Saranjame, for Applicants.
Ms.Eventa Gonsalves a/w R.L.Gonsalves i/b B.A.Chowlera, for Respondents.

***CORAM : N.M.Jamdar, J.
Wednesday, 22 February 2017.***

Oral Order :

By this Revision, the Applicant has challenged the concurrent Judgment and Orders passed by the Small Causes Court, Mumbai and the Appellate bench of Small Causes Court Mumbai, decreeing the suit filed by Respondents-landlord and directing the Applicant to hand over possession of the suit premises.

2. The suit premises is room No.4 in block No.4, second floor of the Mazgaon Mansion, situated at 153 / 155 Mascarenhas Road Bombay. The R.A.E. & R Suit No.1629 / 5299 of 1983 was filed by

Respondents-landlord seeking recovery of the possession of the suit premises from the Applicant/s that the Applicants have carried out an additional alteration to the suit premises of permanent nature without the permission of Respondents-landlord and have committed breach of terms and conditions of tenancy agreement dated 9 April 1970, further by denying the title and not paying the rent regularly. It was also contended that the Applicant has committed nuisance. The learned Small Causes Court Judge, by Judgment and Decree dated 16 February 2002, partly decreed the suit and directed the Applicant to hand over the possession of the suit premises. An Appeal No.549 of 2002 was filed by the Applicant before the Appellate bench of Small Causes Court. During the pendency of the appeal, Respondents-landlord moved an application under Order 41 Rule 27 of Code of Civil Procedure for amending the plaint for placing on record subsequent events of additional alterations carried out by the Applicants. The amendment was allowed. Finding was called for from the learned Small Causes Court and the Appeal was heard. The Appellate bench, after considering the evidence on record and considering the rival contentions, by order dated 15 October 2016 dismissed the Appeal. Thereafter the present Revision Application is filed.

3. The learned counsel for the Applicant submitted that four instances of constructions have been held against the Applicant as of being permanent in nature, which are not of permanent nature and

secondly, for erection of such construction no permission from either the Municipal Corporation as well as from the Planning Authority under the relevant statutes is necessary. He submitted that water tank is only a plastic tank and is supported on wooden planks and the learned Appellate court has erroneously held that it is made out of iron girdles and the tank is of galvanised metal. Though the Appellate bench has used the word 'iron girdles and galvanised sheet' in one part of the discussion, the Appellate bench has stated and held that the tank is supported by wooden rafters. The Appellate bench has taken note of the fact that a water tank having capacity of 350 to 400 litres supported on wooden rafters will require digging into the walls for the foundation of the wooden rafters and such construction cannot be easily removed. This finding is a possible view of the matter and is in consonance with the basic construction knowledge.

4. It was then submitted that the said water tank was for the beneficial use of the premises. For erection of such water tank if the Applicant has caused damage to the suit premises then such activity cannot be considered having been carried out for beneficial use of the premises. The learned counsel for Respondents-landlord has pointed out that the building does have a common water tank from where water is supplied, the question of not acquiring permission for construction of certain nature from the Planning authority under the Maharashtra Regional Town Planning Act, 1966 is not a relevant criteria.

5. For consideration of what is a permanent construction, section 13(1)(b) of the Bombay, Rents, Hotel and Lodging House Rates Control Act of 1947 permission of the landlord is the relevant criteria. This concept cannot be confused by linking it to the requirement of permission of the Municipal Corporation or the Planning authority under the Mumbai Municipal Corporation Act 1949 and Maharashtra Regional and Town Planning Act, 1966. If on the material placed before the Court it can be easily said that the construction carried out is of permanent nature and it is without the permission of the landlord, the said conclusion cannot be overridden by the non-requirement of taking permission from the Planning authority or the Municipal Corporation.

6. It was then contended that laying tiles in the suit premises is also for purpose of beneficial enjoyment and could not have been considered as construction of permanent nature. This argument also cannot be accepted and has been rightly rejected by both the Courts. It has been recorded as a finding of fact that the suit premises had mosaic tiles which were converted, by digging the floor and laying the new marble tiles. Replacing entire flooring by digging out the premises and laying heavier marble tiles would require the permission of the landlord. No such permission has been sought. It is not possible to interfere with the finding of fact regarding the tiles being of permanent nature recorded by both the Courts.

7. The learned counsel for Respondents-landlord then submitted that taking water connection to the suit premises could not possibly be considered as construction of permanent nature, so also locking a door in the passage. He submitted that the door was placed near the two rooms on the end of the corridor and both the rooms were occupied by the Applicant and his close relative and did not cause inconvenience to anybody.

8. As far as the water pipe connection is concerned, the learned counsel for Respondents-landlord pointed out that the Applicant had illegally taken the water connection from the main pipeline which lay through the compound of the building and for which he had faced action from the Municipal Corporation as well as complaints of the other tenants. As far as closure of the door is concerned, the learned counsel for the Respondents-landlord submitted that by putting up the door and closing the same the Applicant appropriated entire corridor as well as monopolised the W.C. and Bathroom which were made for common use. Even though locking of the door may not be considered as construction of permanent nature, the Respondents-landlord had also pressed into service the ground of breach of tenancy conditions by the Applicant. The agreement was executed between the parties on 8 January 1970. By closing the door and thereby unilaterally including certain common area in his possession, the Applicant had committed breach of the conditions of tenancy.

9. The learned counsel for the Applicant submitted that the Appellate bench has not rendered a categorical finding regarding the breach of conditions of tenancy but has only referred to finding regarding constructions of a permanent nature. The Appellate bench and Small Causes Court Judge had framed a specific additional issue as to whether the Applicant had committed breaches of the terms of conditions of tenancy. The learned Small Causes Court Judge referred to the tenancy agreement and held that the conditions of the tenancy agreement were breached. Therefore, even assuming the water tap connection and the door in the passage did not constitute permanent construction they did constitute breach of the conditions of the tenancy agreement which ground was pressed into service by the Respondents-landlord.

10. Apart from this position there is no perversity in the findings of both the Courts for putting up the water tank of 350 to 400 litres inside the suit premises and digging up the suit premises to lay marble tiles without permission of the Respondents-landlord gave rise to claim of granting decree under Section 13(1)(b) of the Act of 1947. The view taken by both the Courts is a possible view. No interference in the revisional jurisdiction is possible. The Revision Application is accordingly rejected.

11. At this stage, the learned counsel for Applicants states that

some time may be granted to take the challenge further. This indulgence can be granted if the Applicants file their affidavits / undertaking within period of three weeks from today that they alone are in possession and they will not create third party rights or part with possession. If such affidavits are filed within period of three weeks from today, then the impugned judgment and decree will not be executed for a period of eight weeks from today. Applicants No.1(b), 1(c) and 1(e) are currently out of India and they have executed Power of Attorney which is on record along with vakalatnama. Learned counsel for the Applicants states that on their behalf Applicant No.1(a) will file an undertaking and along with this undertaking given, the Power of Attorney holder will submit cogent proof of having communicated this order to the remaining Applicants and their response to the same by post / e-mail. The Power of Attorney holder will include the said fact that all Applicants have been duly informed of the present decision, in the affidavit to be filed.

12. The learned counsel for the Respondents-landlord states that the Applicants have not cleared arrears from the year 2013 onwards. The learned counsel for the Applicants states that as per order dated 7 November 2015 amount of ₹ 84,317 has already been deposited. The Applicants will deposit additional amount of ₹ 82,047/- within period of four weeks from today being the total amount to ₹1,66,365. If by the end of eight weeks no contrary order is passed, the

Respondents-landlord will be permitted to withdraw the amount so deposited.

(N.M.Jamdar, J.)