

sas

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.717 OF 2016

Ainuddin Fakhir Mulla ..Applicant.

V/s.

Smt. Niyamabti Mohammed Attar & Anr. ..Respondents.

Mr.G.S.Godbole with Mr.Tushar Dahibawkar i/b. Dhahibawkar & Co. for the Applicant.

Mr.Kunal Bhanage for Respondent No.1.

Mr.J.G. Reddy for Slum Redevelopment Authority.

Mr.Siddeshwar Kalel, AGP for State.

CORAM : N.M.Jamdar, J.

DATED : 9 February, 2017

P.C. :-

Heard the learned counsel for the parties. The Applicant has challenged the order passed by the Appellate Bench of the Small Cause Court and the Small Cause Court Judge, Mumbai whereby the suit filed by the Respondent-landlord is decreed and the appeal filed by the Applicant is dismissed.

2. The suit was filed on the ground of sub-letting and non user. The learned counsel for the Applicant submitted that there is

no non user of the premises as the premises have not been wholly abandoned. This submission cannot be accepted as a finding of fact has been recorded that the original tenant is not residing in the suit premises for the stipulated period prior to the institution of the suit and nothing has been shown that the Applicant has any connection with the original tenant. The finding recorded by both the Courts on the ground of non user, therefore, cannot be interfered with.

3. As regards sub-letting is concerned, the learned counsel for the Applicant submitted that no proof of any consideration has been established by the Respondent-landlord. It is not possible to accept this contention as well, as the internal arrangement between a tenant and sub-tenant is not known to the Respondent-landlord. Therefore, the burden cannot be placed on the Respondent-landlord.

4. It was then contended that before the suit was instituted, a notification was issued declaring the area in which the premises are situated as a slum under the Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971 and in spite of an order dated 6 May, 2004 was passed by the Maharashtra Slum Area Tribunal remanding the proceedings to the Competent Authority, nothing was done and in the meanwhile the suit was instituted and decree was passed. The learned counsel for the Applicant has drawn my attention to the order passed by the Division Bench on 21 October, 2016 in Writ Petition No.9172 of 2014 wherein the

Division Bench has directed the Competent Authority to dispose of the proceedings as directed by the Tribunal within four months. It is informed that the period of four months expired in March, 2016.

5. The position today is that, there is no declaration under the Act in respect of the suit premises. However, the fact that the Tribunal has passed an order in the year 2004 remanding the proceedings and till date the Competent Authority, for reasons best known to it, has not decided the proceedings, it will be appropriate that the Applicant is protected to a limited extent that the Respondent will proceed to take action against the Applicant in respect of the execution of the decree after the decision of the proceedings to be decided by the Competent Authority as directed by the Tribunal in Appeal No.197 of 1990 and Writ Petition No.9172 of 2014. Order accordingly.

6. Needless to state that if the area is declared as a slum, then, the Respondent will have to proceed as per the provisions of the Act and if the order of the Competent Authority is in favour of the Respondent, then, before the proceeding to execute the decree, the executing Court will anyway give adequate notice to the Applicant. The civil revision application is accordingly disposed off.

7. In the meanwhile, the Applicant will not part with the possession or create any third party rights. The Applicant will accordingly file an affidavit within a period of two weeks from today.

8. Considering the fact that compensation at the rate of Rs.600/- was fixed by the Appellate Bench and that the Applicant is continuing to occupy the premises, as indicated above, by passage of time, the amount needs to be revised. The Applicant will pay the landlord an amount of Rs.1,200/- without prejudice to the rights and contention of the Respondent-landlord, from February, 2017 onwards.

9. Liberty to the parties to produce an authenticated copy before the appropriate authority.

(N.M.Jamdar, J.)