

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

CIVIL REVISION APPLICATION NO. 430 OF 2017

Prashant Siddheshwar Tavkire & Ors.	...	Applicants
V/s.		
Motilal Hiralal Zanwar	...	Respondent

- Mr.Ashutosh M. Kulkarni for the Applicants.
- Mr.Ashok B. Tajane for the Respondent.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 6th MARCH, 2018.

P.C. :

1] Heard learned counsel for the Applicants and learned counsel for the Respondent.

2] By this Civil Revision Application, filed under Section 115 of the Civil Procedure Code (*for short*, "*C.P.C.*"), the Applicants are challenging the Judgment and Decree dated 7th June, 2017 passed by the Civil Judge Senior Division, Solapur in Regular Civil Suit No.897 of 2002 (old number, Special Civil Suit No.247 of 2006).

3] The Applicants are the Original Defendants and the Respondent is the Original Plaintiff in the suit filed before the trial Court for recovery of possession filed under Section 6 of the Specific

Relief Act. The subject matter of the suit pertains to the Five rooms + bath room + 3 HP electric motor installed therein which is part and parcel of Solapur Municipal Corporation House No.107 : City Survey No. 8500D/11/1B, adms.3010 sq. fts. : 279.9 sq.mtrs., situated at Murarji Peth, Solapur.

4] According to the Respondent, he was inducted as a tenant in the suit property at the instance of one Mr.Ashok Patil at the agreed rent of Rs.3,000/- per month. He had also given the deposit of Rs.5,00,000/- to Mr.Ashok Patil. The rent was paid upto March 2006, however the receipts were not issued. The vacant possession of the suit property was claimed in the month of April 2006. The Respondent did not vacate the suit property, however, he removed some household articles. Later on, 25th September 2006, in the absence of Respondent, the Applicants took the possession of the suit premises. In respect of the said incident, one Criminal Case was also lodged. Thus, it is the case of the Respondent that as he is dispossessed from the suit premises without his consent and otherwise than in due course of law, he is entitled for recovery of possession of the suit premises under Section 6 of the Specific Relief Act.

5] This suit came to be resisted by the Applicants vide their

written statement at Exhibit-17 contending *inter-alia* that there is no cause of action for filing the suit, as the Respondent himself has vacated the possession of the suit premises. The possession receipt dated 31st March 2006 is executed to that effect by the Original owner Rukmayya s/o. Sabayya Guttedar in favour of the present Applicants. According to the Applicants, they had purchased the suit property on 10th February 2006 and had received the vacant possession thereof on 31st March 2006. Thereafter, the Respondent had encroached on the suit property on 18th June 2006. It is denied that the Respondent was in possession of the suit premises as a tenant. In the alternate, it is submitted that, if the Respondent has himself removed his household articles from the suit premises, he has no right to contend that he was dispossessed from the suit premises, without his consent or otherwise than in due course of law. Hence, the suit cannot lie under Section 6 of the Specific Relief Act.

6] In support of their respective contentions, the parties examined themselves and on the basis of the said evidence, the trial Court was pleased to decree the suit, vide its impugned judgment and order. Being aggrieved thereby this Civil Revision Application is preferred.

7] Learned counsel for the Applicants had in the course of his

submission taken this Court through various averments made in the plaint to show that as per the own showing of the Respondent, he has started removing his household articles and by the end of April 2006 he has removed most of the household articles. He has even shifted his residence to the other premises. Therefore, he was not at all in the possession of the suit premises. Only few articles, which he claims to be belonging to him were lying in the suit premises, but if he was not in possession of the suit premises on his own showing. Hence, there cannot be the question of Applicants dispossessing him without due process of law.

8] According to learned counsel for the Applicants therefore, the essential ingredient of Section 6 of the Specific Relief Act, “of dispossession from the suit premises otherwise than in due course of law”, being not satisfied in the instant case, the trial Court has committed an error in decreeing the suit.

9] Learned counsel for the Applicants has in this respect placed reliance on the possession receipt dated 31st March 2006 executed by the Original owner Rukmayya s/o. Sabayya Guttedar stating that the vacant possession of the suit premises was handed over to the Applicants.

10] Per contra, learned counsel for the Respondent has supported the impugned judgment and order of the trial Court by submitting that there is no evidence on record to show that the Respondent has handed over vacant possession of the suit premises to the Applicants at any time. Mere removal of the household articles does not amount to handing over vacant possession of the suit premises and hence, according to him, the trial Court has rightly held that the Respondent is dispossessed otherwise than in due course of law and accordingly, decreed the suit.

11] As most of the facts of the suit in this case are not realm of the dispute, the only issue raised for consideration in this Civil Revision Application is whether the Respondent was dispossessed without his consent or and otherwise than in due course of law.

12] The perusal of the judgment passed by the trial Court clearly goes to show that in their written statement, the Applicants have not disputed that the possession of the suit premises was with the Respondent as a tenant. There are sufficient averments to that effect, even in the registered sale-deed executed between the Applicants and the Original owner. Therefore, the fact remains that, even in the absence of rent receipts, the Respondent was in possession of the suit premises as a tenant.

13] Though, learned counsel for the Applicants has relied upon the possession receipt dated 31st March 2006 executed by the previous owner in favour of the Applicants, admittedly the Respondent was not party to the said possession receipt. If he was in possession of the suit premises, it was for him to execute such possession receipt. However, not only he was not a party to such possession receipt, there is also no other evidence to show that the Respondent has handed over the vacant possession of the tenanted premises to the previous owner. Even the previous owner Rukmayya s/o. Sabayya Guttedar is also not examined to prove this possession receipt or to prove that she had received the vacant possession of the suit premises from the Respondent on this particular date.

14] In such situation, the entire reliance of learned counsel for the Applicants is on the averments made in the plaint itself. It is true that, in paragraph No.3 of the plaint, Respondent has stated that he has started removing his household articles, step by step, in order to vacate the premises and he has also told Mr.Ashok Patil that he has going to vacate the possession of the suit premises and Mr.Ashok Patil should make arrangement for repayment of Rs.5,00,000/-. It is also stated in the plaint, in paragraph No.3, that by 30th April 2006, Respondent has removed most of the household articles from the suit

premises and he has even shifted his residence to the address given in the plaint i.e. Bhavani Peth, Solapur. Thereafter, he has stated that, by 18th June 2006 he has removed majority of the household articles from the suit premises.

15] However, Respondent has also further categorically stated that, he has not handed over the possession of the suit premises to anyone. Conversely, he has stated in the plaint that, as on 18th June 2006 there were two steel cupboards, some valuable utensils and other articles in the suit premises including the Gas Cylinder, Gas Stove, Burner, 3 wooden cot, 2 wooden tables, the electric motor, two bicycles of his children, 3 Ceiling fans etc.. Thus, according to him, he was still in possession of the suit premises and he has also paid the electricity bills till June 2006. However, only on 18th June 2006, he came to know that his washing machine and the plastic water tank was removed from the suit premises and thereafter, he found that the suit premises were locked with another lock by the Applicants herein. Then he lodged a complaint about this incident. It may be true that, in the said Criminal Complaint, the Applicants are acquitted for want of sufficient evidence but the fact remains that as per the case of the Respondent, though he has shifted his residence to the address given in cause title of the suit, he has not handed over the vacant possession

of the suit premises to anyone, either to the Applicants or even to the earlier co-owner. Conversely, as per his own evidence, his articles were very much lying in the suit premises. The suit premises were under his lock and key till the Applicants put their own lock.

16] Therefore, the trial Court has rightly held that there was no evidence produced on record to show that the Respondent has handed over vacant possession of the suit premises. In such situation, when admittedly, Respondent is dispossessed therefrom; then it has to be held that he was dispossessed without his consent and otherwise than in due course of law. Mere shifting of some or majority of articles from the suit premises cannot amount to the handing over of vacant possession. In the absence of such evidence produced to show that the vacant possession thereof was handed over by the Respondent voluntarily to the Applicants or to earlier owner landlady, the necessary inference that he is dispossessed without his consent and otherwise than in due course of law has to be drawn. Therefore, the necessary ingredient of Section 6 of the Specific Relief Act stands satisfied. The suit is admittedly filed within six months from the alleged date of dispossession, and hence no fault can be found in the impugned judgment and order of the trial Court of decreeing the suit and directing the Applicants to hand over the possession of the suit

premises to the Respondent.

17] Perusal of the impugned judgment and order of the trial Court goes to show that the trial Court has appreciated the entire evidence on record in its proper perspective and hence, within the limited scope of the Revisional Jurisdiction of this Court, no ground is made out to interfere in the order of the trial Court.

18] Civil Revision Application therefore stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]