

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application No. 7 OF 2017

Shrikant Bhargav Sathe

...Applicant

Versus

Hormaz Aspandiar Irani (Dashti)

And Ors

...Respondents

....

Mr. Murtaza Nazmi a/w. Sushil K. Chourasia i/b. SKC Legal for the Applicant.

Mr. Agnel Carneiro a/w. Mangesh Bhole i/b. Mulla & Mulla & Craigie Blunt & Caroe, for Respondent No.1.

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CORAM : R. G. KETKAR, J.

DATE : 04th JUNE, 2018

PC.

1. Heard Mr. Murtaza Nazmi, learned Counsel for the applicant and Mr. Agnel Carneiro, learned Counsel for respondent No.1, at length.

2. By this application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicant, hereinafter referred to as 'defendant No.2', has challenged the judgment and decree dated 6.10.2016 passed by the Appellate Bench of the Small Causes Court at Bombay in Appeal No.484/2010. By that order, the Appellate Court allowed the appeal preferred by respondent No.1, hereinafter referred to as the 'plaintiff', and quashed and set aside the judgment and decree

dated 20.8.2010 passed by the learned Judge, Court Room No.16 of the Small Causes Court in L.E. & C. Suit No.126/134 of 2002. The Appellate Court decreed that suit and directed defendant No.2 and other defendants to hand over possession of the hanging stall on the outside of shops No.6, 7, 8 and 9 and on the left hand side of the entrance to Poddar Building No.1, situate at 47-A, Dr. Meisheri Road, Near Sandhurst Road Railway Station, Mumbai (for short, 'suit stall') to the plaintiff within 90 days from the date of the order.

3. In support of this application, Mr. Nazmi submitted that the learned trial Judge dismissed the suit on the ground that the suit stall is a premises within the meaning of Section 7(9) of the Maharashtra Rent Control Act, 1999 (for short, 'Act'). As against this, the Appellate Court held that the suit stall is not a premises within the meaning of Section 7(9) of the Act. He has invited my attention to :

- i. Paragraph-8 of the written statement dated 11.3.2003 filed by original defendant Shri Krishna B. Sathe (since deceased);
- ii. Architect's report dated 17.12.2005 and in particular paragraph-2, 3 and 4 thereof; and
- iii. The findings recorded by the learned trial Judge in the judgment and decree dated 20.8.2010 and in particular

paragraphs-25 to 28 thereof.

4. Mr. Nazmi submitted that the suit stall is in place and stead of a window and is forming a part of a building. In view of Section 7(9)(ii) of the Act, since the suit stall is part of a building, it falls within the definition of “premises”. The Appellate Court was, therefore, not justified in reversing the trial Court's well reasoned order and decreeing the suit.

5. On the other hand, Mr. Carneiro has invited my attention to the findings recorded by the Appellate Court and in particular paragraphs-27 to 46. He submitted that in paragraph-27, the Appellate Court discussed the evidence of defendant's witness Jayshree who admitted the photographs of the suit stall at Exhibits-32 to 34 and at Exhibits-60 to 63. She further categorically admitted that the suit stall is in fact on the outer wall of the restaurant premises. He has also submitted that in fact in respect of similarly situated stall, this Court already concluded the issue by holding that the suit stall is not a premises within the meaning of Section 7(9) of the Act. He invited my attention to the order dated 14.6.2016 passed by this Court in C.R.A. No.347/2015 [Mrs. Sujata Suresh Parkar v. Behram Aspandiar Irani and others]. This was also considered by the Appellate Court in paragraph-

46 of the impugned order. He, therefore, submitted that no case is made out for interfering with the impugned order.

6. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. Section 7(9) of the Act reads thus :

“7. Definitions.-- In this Act, unless there is anything repugnant to the subject or context,--

XXXXXXX
XXXXXXX

(9) "premises" means any building or part of a building let or given on licence separately (other than a farm building) including,--

- (i) the gardens, grounds, garages and out-houses, if any, appurtenant to such building or part of a building,
- (ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof, but does not include a room or other accommodation in a hotel or lodging house;”

7. Mr. Nazmi submitted that the suit stall is part of a building and as such is covered by the definition of “premises”. It is not possible to accept this submission. In paragraph-27, the Appellate Court has considered the admissions given by defendant's witness Jayshree. A

perusal of paragraph-27 clearly shows that the witness Jayshree admitted during her cross-examination that the suit stall is stationed on the outer wall of the restaurant premises. In other words it cannot be said to be part of a building and, therefore, is covered by the expression “premises” under Section 7(9) of the Act.

8. Mr. Nazmi relied upon the Architect's report dated 17.12.2005 (Exhibit-42). A perusal of this report also does not support the case of defendant No.2 that the suit stall is part of a building. Not only that a perusal of the written statements filed by defendant No.2 also does not remotely indicate that such case was made out by defendant No.2. Defendant No.2 also did not lead any cogent evidence to establish that the suit stall is part of a building. On the other hand, the admissions given by the witness Jayshree, as discussed in paragraph-27 by the Appellate Court, clearly goes to show that the suit stall is in fact on the outer wall of the restaurant premises.

9. In the order of this Court dated 14.6.2016 in C.R.A. No.347/2015 [Sujata Suresh Parkar v. Behram Aspandiar Irani and others], this aspect was considered. In paragraph-12, it was noted that the suit stall was an external attachment to outer wall of the premises. There was nothing on record to show that the suit stall is necessary for

the beneficial enjoyment of the suit building and property.

10. In the light of the aforesaid discussion, I do not find that the Appellate Court committed any error in holding that the suit stall is not a premises as contemplated by Section 7(9) of the Act. After appreciating the evidence on record, the Appellate Court held that the suit stall is not a premises within the meaning of Section 7(9) of the Act. Defendant No.2 was not in a position to demonstrate that the findings recorded by the Appellate Court are perverse, being based upon no evidence or that they are contrary to the evidence on record. Defendant No.2 was also not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the Appellate Court. Merely because on the basis of evidence on record another view is possible, that itself is no ground for invocation of powers under Section 115 of C.P.C. Hence, no case is made out for invocation of powers under Section 115 of C.P.C. Civil Revision Application fails and the same is dismissed with no order as to costs.

11. At this stage, Mr. Nazmi orally applies for stay of eviction decree for a period of twelve weeks from today. Mr. Nazmi states that defendant No.2 is in possession and he has neither created third party interest nor parted with the possession. He will hereafter neither create

third party interest nor part with the possession. He further states that defendant No.2 and all adult family members using the suit stall are ready and willing to give usual undertaking within two weeks from today. The learned Counsel for respondent No.1 opposes said prayer.

12. Having regard to the fact that applicants desire to challenge this order before the Apex Court, in my opinion, ends of justice would be met by staying operation of eviction decree for a period of twelve weeks from today subject to defendant No.2 and all adult family members using the suit stall giving usual undertaking to this Court within two weeks from today incorporating therein:

- (i) that they are in actual possession of the suit stall and nobody else is in possession;
- (ii) that they have so far neither created third party interest nor parted with the possession of the suit stall;
- (iii) that they will hereafter neither create third party interest nor part with the possession of the suit stall;
- (iv) that they will pay the arrears of rent, if any, to respondent No.1 within two weeks from today; and
- (v) that in case the applicants are unable to obtain suitable orders from the higher Court within twelve weeks from today, they will deliver vacant and peaceful possession of the suit stall to respondent No.1.

13. In view thereof, notwithstanding dismissal of Civil Revision Application, the eviction decree shall remain stayed for a period of

twelve weeks from today, subject to defendant No.2 filing undertaking in the aforesaid terms within two weeks from today, with copy in advance to the other side. In case defendant No.2 does not file undertaking in the above terms and/or arrears of rent are not paid within two weeks from today, the interim order shall stand vacated without further reference to the Court.

14. List the application for reporting compliance on 20.6.2018.
Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)