

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.101 OF 2018

Rajnigandha @ Rita Singh	...	Applicant
Vs.		
M/s. Suru Consultants Pvt. Ltd.	...	Respondent

Mr. Anand Pande for Applicant.

CORAM : R. G. KETKAR, J.
DATE : MARCH 8, 2018

P.C. :

Heard Mr. Pande, learned Counsel for the applicant at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908, applicant, hereinafter referred to as 'defendant', has challenged the judgment and decree dated 11.01.2018 passed by the Appellate Bench of the Small Causes Court, Bandra at Mumbai in A-1 Appeal No.27 of 2015. By that order, the appellate Court allowed the appeal preferred by the respondent, hereinafter referred to as 'plaintiff', and quashed and set aside the judgment and decree dated 05.05.2015 passed by the learned Judge, Court Room No.35 in R.A.E.Suit No.13/24 of 2009 and decreed the Suit instituted by the plaintiff. The defendant is directed to handover vacant possession of room No.102/103 admeasuring about 400 sq.ft. situate on first floor of Sai Commercial Centre, plot No.504, Linking Road, Khar (W), Mumbai 400 052 (for short 'suit premises').

3. The plaintiff had instituted Suit against the defendant inter alia contending that plaintiff company is the owner and landlord of the building known as Sai Commercial Centre (earlier known as 'Moolee

Tolla building') (for short 'suit building') and the defendant is plaintiff's monthly tenant of the suit premises. The monthly rent is Rs.700/- excluding water charges and electricity charges and permanent increases. Plaintiff contended that on 01.04.2008, they have received a letter dated 27.03.2008 from Senior Inspector of Police, Khar Police Station, Mumbai stating that an offence under Sections 3, 4, 5, 7(1)(b) of Immoral Traffic (Prevention) Act, 1956 (for short 'Act') is committed in the suit premises and for that Khar Police Station has registered a crime bearing register No.09/08. Along with the plaint, a letter bearing No.2417/08 dated 27.03.2008 was annexed as exhibit-C. Plaintiff contended that its Director Mr. Kanhaya N. Wadhwani orally warned the defendant to cease the indulgence in the said illegal and immoral activities in the suit premises or else necessary eviction proceeding would be instituted against the defendant. In spite of the said warning, the defendant did not stop the illegal and immoral activities in the suit premises. Plaintiff further contended that on 01.10.2008, its Director Mr. Kanhaya N. Wadhwani received a summons under Section 160 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') from the Senior Inspector of Police Social Service, Crime Branch, Commissioner of Police Office, L. T. Marg Crawford Market, Mumbai. It was set out in the Summons that Social Service Branch of the Crime Branch of Bombay Police raided the suit premises on 28.09.2008 and took in their custody three girls and five men for the offence under Sections 3, 4, 5, 7(1)(b) of the Act. Plaintiff annexed copy of that summons at exhibit-D to the plaint.

4. Defendant filed written statement in March 2009 resisting the Suit. In so far as the assertions made in paragraphs 7, 8 and 9 are concerned, the defendant dealt with those assertions in paragraphs 10, 11 and 12 (wrongly typed as '7, 8 and 9'). In paragraph 13 (wrongly typed

as '10'), defendant admitted registration of case of the Social Service Crime Branch against her. It was contended that the contents of the letter dated 27.03.2008 are false, fabricated and created and got up story of the police. There is no truth in the said allegation of the police. Though the case is registered by the police, the same is yet to be decided by the learned Metropolitan Magistrate, before whom the case is pending.

5. On the basis of the pleadings of the parties, the learned trial Judge framed the necessary issues on 25.11.2011. On behalf of the plaintiffs, its Director, Wadhwani was examined. He reiterated the contentions in paragraphs 7 to 10. In paragraph 10, P.W. deposed that on 28.09.2008, the Social Service Branch of the Crime Branch of Bombay Police raided the suit premises and took in custody 3 girls and arrested 5 men for the offence under Sections 3, 4, 5, 7(1)(b) of the Act. He was cross-examined at length by the defendant. Defendant entered into the witness box and she was cross-examined by the plaintiff.

6. By the order dated 05.05.2015, the learned trial Judge dismissed the Suit. Aggrieved by that decision, plaintiff preferred Appeal which, as indicated earlier, was decreed. It is against these orders, defendant has instituted the present C.R.A.

7. Mr. Pande has taken me through the cross-examination of the plaintiff's witness, which is to the following effect:

“Now, I am shown summons issued by Social Service Branch, L.T. Marg Police Station Exhibit-22. I do not recollect whether summons Exhibit-22 was received by me or anybody else. It is correct to say that, I was called by the Police after effecting raid on Room Nos.101 and 102. When I was called by the Police, Police Officer were sitting in Room Nos.102 and 103. I have not asked Police Authority why Room No.101 is mentioned in summons Exhibit-22. It is correct to say that, I have sought

eviction in respect of Room Nos.102 and 103. I have not made further enquiry about action taken by Police after effecting raid. According to me, Room Nos.101, 102, 103, 104 were sealed by police but Room No.105 was not sealed. Before sealing the above four rooms Police had called me. I have not applied to remove the seal as I was not in possession of Room Nos.101 to 104. I am not aware what proceedings were initiated by Police against the defendant after effecting raid. No tenant in the suit property had made complaint in writing to me about allegation in the plaint. I again say that, they have informed me orally about the said fact. It is not correct to say that, I have managed the action by joining hands with Police against the defendant with intention to evict the defendant from the suit premises. It is correct to say that, I have filed another suit in this court in respect of Room Nos.101, 104, 105. Witness again says that, I am not sure whether said suit is in respect of one room or three rooms. I have filed said suit on the ground of addition and alteration and unauthorized construction in the premises. It is not correct to say that, I have filed false suit.”

8. He also invited my attention to the finding recorded by the learned trial Judge in paragraph 15 to contend that there are 48 tenants in the suit building. P.W.1 is not an eye witness and his evidence is hearsay. Evidence of the plaintiff is not corroborated by evidence of any eye witness. Though there are 48 tenants in the suit building, plaintiff did not examine any other tenant. As against this, the appellate Court has considered this aspect in paragraphs 19 and 20 and concluded that defendant admitted registration of two offences against her under the Act in paragraphs 9, 10 and 12 of the written statement. This prima facie shows that the suit premises were used for illegal purpose by the defendant. He submitted that the criminal cases are still pending and defendant is not convicted in any other offences. In fact from the perusal of the evidence on record, it would be evident that plaintiffs have managed the the action by joining hands with police against the defendant with intention of evicting her from the suit premises. He, therefore, submitted that the application requires consideration.

9. I have considered the rival submissions advanced Mr. Pande. I have also perused the material on record. As noted earlier, along with the plaint, plaintiff has annexed letter bearing No.2417/08 dated 27.03.2008. A perusal of that letter shows that Senior Police Inspector attached to Khar Police Station stated therein that prostitution is carried out in rooms No.102 and 103 and accordingly F.I.R.No.9 of 2008 is registered under Sections 3, 4, 5, 7(1)(b) of the Act and the plaintiff was cautioned that in future if it is found that prostitution is carried out therein, the rooms will be sealed. Plaintiff had also annexed summons issued under Section 160 of Cr.P.C. to the plaintiff informing them that on 28.09.2008, raid was carried out in respect of the suit premises and three girls and five men were arrested and F.I.R.No.49 of 2008 was registered under Sections 3, 4, 5 and 7(1)(b) of the Act. P.W. reiterated these facts in paragraphs 7 to 9 of his examination-in-chief. Though defendant contended in the written statement that these letters are forged and fabricated, she did not substantiate the said contention by adducing any evidence. By merely contending that these letters are forged and fabricated, will not establish the case made out by the defendant. Defendant did not examine any other occupant of the suit building or any police officer attached to Khar Police Station. The appellate Court noted that in paragraphs 9, 10 and 12, defendant admitted that two offences under the Act are registered against her.

10. Mr. Pande submitted that plaintiff has not established that defendant is carrying out any illegal and immoral activities in the suit premises and the appellate Court was, therefore, not justified in passing the eviction decree. I do not find any merit in this submission. As noted earlier, it has come on record that letter was issued by Senior Police Inspector followed by summons issued under Section 160 of Cr.P.C. The summons was issued after the Crime Branch raided the suit premises on

28.09.2008 and took in the custody three girls and arrested five men for the offence under Sections 3, 4, 5 and 7(1)(b) of the Act. A perusal of the cross-examination of P.W. does not indicate that the said statement was in any way contradicted. In view thereof, I do not find that the appellate Court committed any error in passing the eviction decree. The findings recorded by the appellate Court cannot be said to be perverse being based upon no evidence or that they are contrary to the evidence. It also cannot be said that no reasonable or prudent person would have reached the conclusion arrived at by the appellate Court. Hence, Application fails and the same is dismissed.

11. At this stage, Mr. Pande orally applies for stay of this order for a period of 6 weeks from today. He states that applicant alone is residing in the suit premises and nobody else is residing. She has neither created third party interest nor parted with possession and she will hereafter neither create third party interest nor part with possession of the suit premises. He further states that applicant is not in arrears of rent. Applicant will file usual undertaking in this Court within two weeks from today, incorporating therein that,

- (i) she is in possession of the suit premises and nobody else is in possession;
- (ii) she has neither created any third party interest nor parted with possession;
- (iii) she will hereafter neither create third party interest nor part with possession;
- (iv) she will not apply for further extension of time;
- (v) in case she is unable to obtain suitable orders from the higher Court within six weeks from today, she will vacate and handover vacant and peaceful possession of the suit premises to the original plaintiff.

12. In view thereof, notwithstanding dismissal of C.R.A., the eviction decree shall not be executed against the defendant for a period of six weeks from today subject to her filing undertaking in the aforesaid terms within two weeks from today.

13. All the concerned parties to act upon the authenticated copy of this order.

14. List the Application for 'reporting compliance' after three weeks.

(R. G. KETKAR, J.)

Minal Parab