

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

CIVIL REVISION APPLICATION NO. 114 OF 2016

Smt. Aruna Sadanand Prabhu & Anr.

.. Applicants.

.Vs.

Smt. Vishranti Ganpat Chinderkar & Ors.

.. Respondents

...

Mr. Ganesh S. Bhat for Applicants.

Mr. Rajesh S. Datar a/w Mr. Dushant Pagare for Respondent Nos.
2, 5 & 6.

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CORAM : G.S. KULKARNI, J.

DATE : 9th JANUARY, 2018.

P.C. :

1. In this Civil Revision Application the applicants, challenge the decree as passed by the learned Trial Judge of Small Causes Court Mumbai dated 8th May, 2009 in an eviction Suit No. R.A.E. & R Suit No. 314/602 of 1999 filed by the respondent-landlord as confirmed by the appellate bench of the Small Causes Court vide judgment and order dated 25 June 2016 in Appeal no.366 of 2009. The suit in question seeking eviction of the applicant-tenant was filed on the ground of default in payment of rent. The applicant was in arrears of rent from 1st August, 1979 to 1st March, 1985 amounting to Rs.2,380/-.

2. Before institution of the suit, the respondent-plaintiffs issued a notice dated 22nd September, 1998 through their advocate terminating the applicant's tenancy and also called upon the applicant to pay arrears of rent. It is not in dispute that the suit notice was not

replied by the applicant-defendant. In the written statement, the applicant-defendant neither disputed the receipt of the notice nor the contents of the notice. In fact the applicant-defendant in para-3 of the written statement has stated that the applicant-defendant is ready and willing to pay the rent however the applicant-defendant could not pay the rent as there was uncertainty as to who is the actual landlord as there was dispute pending between the respondent and another person Yashwant Kharade in regard to the ownership of the suit premises. Applicants denied that their tenancy was terminated by suit notice dated 22nd September,1998.

3. The learned Trial Judge considering the evidence on record observed that the receipt of the suit notice was admitted by the applicant-defendant. There was no necessity for any other evidence on issue of notice, as the contents of the notice were clear which called upon the applicant to make payment of arrears of rent as also permitted increases. Considering the provision of Section 12(2) of the Bombay Rent Act, it was observed that there was no material on record that the applicant-plaintiff had made payment of the rent, on receipt of the claim as made by the respondent in the demand notice. It was observed that the applicant-defendant claimed that the respondent-plaintiff is not a land-lord and therefore did not make payment of the rent. The learned Trial Judge recorded a finding that the contention of the applicant that the respondent is not the owner cannot be accepted as the defendant could not produce any material to show that one Yashwant Kharade had the become the owner of the suit premises. In fact there was a contradictory stand taken by the applicant-defendant that plaintiff had purchased the suit premises from the said Yashwant Kharade by making payment of an amount of Rs.7,000/-. However, it was totally

unsubstantiated and there was no evidence to place on record in this regard. The learned Trial Judge accordingly decreed the suit of the respondent in the following terms.

- “1. Suit is decreed with costs.
2. The defendants are hereby directed to vacate and handover the vacant possession of the suit premises i.e Room No.8, situated at Datta Smruti Chawl No.4, situate at Sai Vihar, Tembipada Road, Bhandup (West), Mumbai 400 078 to the plaintiffs within three months from the date of this order.
3. The defendants do pay Rs.1260/- (Rs. One Thousand Two Hundred Sixty only) being arrears of rent and permitted increases to the plaintiff.
4. An inquiry under Order 20, Rule 12 of the C.P.C. is directed for ascertain the mesne profits in respect of the suit premises from the date of filing of suit till the delivery of actual possession of the suit premises to the plaintiffs.
5. Decree be drawn up accordingly.”

4. The applicants being aggrieved by the judgment and decree passed by the learned Trial Judge filed appeal No.366/2009 before the Appellate Bench of the Small Causes Court which dismissed applicant's appeal by the impugned judgment and order dated 25th January, 2016.

5. Heard the learned counsel for the applicants and the learned counsel for the respondent. Learned Counsel for the applicants in assailing the concurrent findings would submit that the suit notice dated 22nd September, 1998 was not proved by the respondents-plaintiffs. It is submitted that the plaintiff has also failed to prove that there was relationship of landlord and tenant between the respondents and the applicants. The submissions on both these issues are not considered by the Courts below. On the other hand learned counsel for the respondent-plaintiff has supported the findings of the courts below.

6. I have perused the judgment of the Trial Court as also the judgment of the Appellate Bench and the evidence on record. The submission as made on behalf of the applicants of the notice being not duly proved cannot be accepted, it is quite clear that the applicants never disputed the receipt of the suit notice or for that matter, the contents of the suit notice. In Para 3 of the Written Statement the only averment as made by the applicant is denying the fact that the tenancy is terminated by the suit notice. Apart from this, the applicant has clearly contended that the applicants were ready and willing to pay the rent, however, it could not be paid because two landlords were fighting in regard to the ownership of the chawl. Thus on one hand it shows that the applicant was ready to pay the rent, however, the rent was not paid to either of the persons or was not deposited in the court within the statutory period of 90 days as provided under Section 12 of the Bombay Rent Control Act, 1947, which is not in dispute. In the circumstances the contention as advanced on behalf of the applicant that the suit notice is not proved, cannot be accepted. The argument appears to be completely in vacuum and unsupported when tested on evidence. In fact there is a material contradiction in the pleas which are taken by the applicant in the Written Statement and in evidence as come on record.

7. As regards the contentions that there was no relationship of landlord and tenant between the respondent and the applicant, the same has also not been accepted by both Court below. Admittedly, when such assertion was made necessarily the burden was on the applicant to place on record appropriate material by which the Court could be persuaded to accept such contention that the respondent-plaintiff was not the real

landlord. There was no documentary evidence or any other evidence which would support the contentions as urged on behalf of the applicant to accept that the other person namely Yashwant Kharade was the landlord. No doubt there was a dispute between the Yashwant Kharade and the respondent in regard to the ownership which was subject matter of the proceeding before the Civil Court. However, merely because there was a pending dispute was not sufficient for the applicant to take a position to assert that the title in respect of the suit property was not that of respondent but that of Yashwant Kharade. In the absence of any documentary evidence which would show that Yashwant Kharade, had become the owner, the applicant's contentions that the real owner is Yashwant Kharade, could not been accepted. Thus findings in that regard by the courts below in this context cannot be said to be perverse. In the circumstance, I find that both the Courts below have appropriately exercised jurisdiction in passing the impugned orders.

8. In the above circumstances, the revision application lacks merit. It is accordingly rejected.

9. At this stage learned counsel for the applicants on instructions of the applicants submits that the applicants are willing to file an undertaking that the applicants shall vacate the premises after expiry of one year. Learned counsel for the respondent-landlord fairly accepts the suggestion which is made on behalf of the applicant.

10. In view of the above consensus, the applicants are directed to place on record of this application an undertaking that the applicants and any other persons claiming through the applicants shall unconditionally vacate the suit premises within a period of one year

from today. Undertaking be filed within a period of six weeks from today

11. In the intervening period, the applicants shall not create any third party rights or interest of whatsoever nature or part with possession of the suit premises. The same also be included in the undertaking to be furnished to the Court. Learned counsel for the applicants also submits that the applicants shall continue to pay the rent of Rs.1500/- per month till the suit premises are vacated.

12. Needless to observe that if the applicants fail to vacate the suit premises the decree shall forthwith become executable.

(G. S. KULKARNI, J.)