

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

**CIVIL REVISION APPLICATION NO. 604 OF 2016
WITH
CIVIL APPLICATION NO. 224 OF 2018**

1. Smt. Sulochana Girjappa Hotkar]
Age 65 years, Indian Inhabitant,]
Presently residing at Palkar Chawl,]
Dharavi Cross Road, Dharavi,]
Mumbai - 400 017.]
]
2. Raju Girjappa Hotkar]
Age 45 years, Indian Inhabitant,]
Presently residing at Palkar Chawl,]
Dharavi Cross Road, Dharavi,]
Mumbai - 400 017.]

... Applicants.

Versus

1. Ramesh Tulsiram Sonawane]
Age 62 years, Indian Inhabitant,]
Presently residing at Palkar Chawl,]
Room No.13, Dharavi Cross Road,]
Dharavi, Mumbai - 400 017.]
]
2. Vishnu Tulsiram Sonawane]
Age 54 years, Indian Inhabitant,]
Presently residing at Palkar Chawl,]
Room No.13, Dharavi Cross Road,]
Dharavi, Mumbai - 400 017.]
]
3. Devdatta Tulsiram Sonawane]
Age 52 years, Indian Inhabitant,]
Presently residing at Palkar Chawl,]
Room No.13, Dharavi Cross Road,]
Dharavi, Mumbai - 400 017.]
]
4. Rajendra Tulsiram Sonawane]
Age 50 years, Indian Inhabitant,]

Presently residing at Palkar Chawl,]
Room No.13, Dharavi Cross Road,]
Dharavi, Mumbai – 400 017.]

... Respondents.

- Mr.Surendra G. Mittal for the Applicants.
- Mrs.Trupti J. Gohil for the Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

RESERVED ON : 5th APRIL, 2018.
PRONOUNCED ON : 19th APRIL, 2018.

JUDGMENT :

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

2] This Civil Revision Application, filed under Section 115 of the Code of Civil Procedure (*for short, "C.P.C."*) takes an exception to the judgment and decree of possession, passed by the City Civil Court, Mumbai, on 20th August 2016 in S.C. Suit No.2266 of 2004 filed under Section 6 of the Specific Relief Act, 1963.

3] Brief facts of the Civil Revision Application are to the effect that, the Original Plaintiff – Tulshiram, since deceased, was the owner and land-lord of the building known as Palkar Chawl, situated at Dharavi, Mumbai. Respondents are the legal heirs of Tulshiram. Room

No.3 of the said Chawl was let out to the Original Defendant - Girjappa as a tenant. The Applicants are the legal heirs of Girjappa. In June 1996 Tulshiram has filed R.A.E. & R. Suit No.737/1513 of 1996 before the Small Causes Court, Mumbai, against Girjappa for recovery of arrears of rent as well as for possession of the suit premises. Girjappa had filed written statement in the said suit but thereafter he remained absent. As a result, the suit proceeded in his absence, and ultimately, it came to be decreed on 27th March 2003 directing him to handover the vacant and peaceful possession of the suit premises along with arrears of rent to the tune of Rs.10,800/-.

4] In execution of the said decree of eviction passed in the suit, Tulshiram received possession of the suit premises through bailiff on 15th October 2003. Against the said judgment and decree, Girjappa did not prefer appeal but filed Miscellaneous Notice No.940 of 2003 for setting aside the said decree, for restoration of the suit and for restoration of possession of the suit premises. Tulshiram appeared in the said matter on 20th October 2003 and made a statement that, he will not part with the possession of the suit premises or create any third party interest therein. Miscellaneous Notice No.740 of 2003 was accordingly adjourned to 30th October 2003.

5] As per the case of the Respondents-Plaintiffs, however, on

31st October 2003 at about 23.30 hours Girjappa broke open the lock of the suit premises and entered into possession of the same. On a complaint thereof, filed by Respondent No.1 on 1st November 2003, F.I.R. No.146 of 2003 came to be registered on 4th November 2003 for the offences punishable under Sections 447 and 448 of the Indian Penal Code (*for short, "I.P.C."*). In pursuance of the said complaint, police handed over vacant possession of the suit premises to Tulshiram. Since then, deceased Tulshsiram was in exclusive use and occupation of the suit premises till 13th November 2003. On that day again, at around 1.00 hours, Girjappa, second time, broke open the lock of the suit premises and forcefully entered therein along with his family. In respect of the said incident also, F.I..R. No.160 of 2003 came to be lodged on 30th November 2003 for the offences punishable under Sections 447, 448, 457 of I.P.C..

6] Thereafter, on 16th April 2004, Girjappa made an application before the Small Causes Court for withdrawal of Miscellaneous Notice No.940 of 2003 on the count that he has received the possession of the suit premises and therefore, he no more wants to prosecute the said application, which was filed for setting aside ex-parte judgment and decree. The Original Plaintiff Tulshiram informed the Small Causes Court that the possession was taken away

from him forcefully by the Defendants. However, as the Applicants therein did not want to pursue the said application, the Small Causes Court was pleased to dispose off it on 29th April 2004, keeping open all the contentions raised by the parties to be decided in appropriate proceeding.

7] In the backdrop of this proceeding, Tulshiram filed the present suit for possession of the suit premises from Girjappa on 27th April 2004, under Section 6 of the Specific Relief Act, 1963, within six months from the date of dispossession.

8] This suit came to be resisted by Girjappa and after him, by the present Applicants contending *inter-alia* that, the Respondents have not approached the Court with clean hands and have made several false, baseless and misleading statements, twisting and fabricating the true and correct facts deliberately and with *malafide* intention suppressed the material facts. It was contended that in execution of the *ex-parte* decree, the Respondents had received only the symbolic possession of the suit premises. The articles of the Applicants-Defendants were still lying in the suit premises. It was submitted that the Applicants had also sent the arrears of rent of Rs.10,800/- claimed in the said suit, by money-order to Tulshiram; which was accepted by him on 31st October 2003. On that day,

Tulshiram has handed over possession of the suit premises to Girjappa subject to condition that he will pay further amount of Rs.8,500/- in full and final settlement in respect of the said premises. Accordingly, Girjappa had paid this amount to Tulshiram at his residence, in presence of Mr.Namdeo, Mr.Sham Shinde and Mr.Mohammed Waheed @ Pappu. Tulsiram had signed the receipt cum permission for the same in presence of these witnesses and allowed Girjappa to reside and do the business in the suit premises. Accordingly, the possession of the suit premises was restored to the Girjappa and it was specifically made clear that he should not inform about this to Tulshiram's son Ramesh; otherwise Girjappa will have to face the consequence.

9] It was submitted that, as Girjappa received the possession of the suit premises with consent of the Original Plaintiff-landlord Tulshiram, Girjappa has withdrawn M.A. No.940 of 2003 which was filed for setting aside the *ex-parte* judgment and decree of eviction. However, thereafter Tulshiram's son i.e. present Respondent No.1 made unlawful demand of Rs.1,30,000/- to Girjappa, which he refused to pay and hence, Respondent No.1 Ramesh has lodged false complaint at Shahunagar Police Station and in collusion with the police got arrested Girjappa and his family members. Thus, as per the case of the

Applicants, as they were put in lawful possession of the suit premises by Tulshiram, there is no question of their dispossessing the Respondents without following due process of law. Hence, the suit filed under Section 6 of the Specific Relief Act could not be tenable and was liable to be dismissed.

10] In support of his case, Respondent No.1 Ramesh examined himself; whereas the Applicant No.2 examined himself and led evidence of three more witnesses, namely, Mr. Mohd. Waheed Mohd. Habeeb, the witness on the alleged receipt cum permission executed by the Original land-lord; Mr.Manickam Perumal and P.S.I. Mr.Jaywant Nirsingrao Bhosale, to prove the F.I.R.

11] On appreciation of their evidence, in the light of the submissions advanced by learned counsels for both the parties, the trial Court was pleased to decree the suit; hence, the instant Civil Revision Application is filed by the Defendants-tenants.

12] Learned counsel for the Applicants has challenged the decree and possession on the count that the trial Court has not properly appreciated oral and documentary evidence on record; whereas, learned counsel for the Respondents has submitted that in the limited scope of revisional jurisdiction, this Court cannot enter

into re-appreciation of evidence and secondly, it is urged that the trial Court has appreciated the same properly.

13] In this case, the undisputed facts on record are to the effect that:-

In pursuance of the decree of eviction passed in R.A.E. & R. Suit No. 737/1513 of 1996, the Respondent-landlord had received possession of the suit premises through bailiff of the Small Causes Court on 15th October 2003 and since then, he was in possession thereof. As admittedly, at the time of filing of the present suit, the Applicants were and now also they are in possession of the suit premises, the burden is upon them, to show that they had received the possession of the suit premises after following due procedure of law or late Tulshiram had willingly handed over the possession of the suit premises to them with his consent. If the Applicants fails to prove so, then the necessary inference would be that the Respondents are dispossessed from the suit premises without due procedure of law and without their consent.

14] So far as the Respondents are concerned, there is sufficient evidence on record to show that, they have been dispossessed forcefully, without following due procedure of law, as immediately after their dispossession on the night of 31st October 2003,

Respondent No.1 had lodged complaint with police on 1st November 2003 at Shahu Nagar Police Station. On the said complaint non-cognizable offence No.208 of 2003 was registered and thereafter, F.I.R. No. 146 of 2003 came to be registered on 4th November 2003 against the Applicants for the offences punishable under Sections 447 and 448 of the I.P.C.. It is a matter of record that, in the course of investigation, the Applicants were arrested and thereafter, the possession of the suit premises was handed over to the Respondents. However, again on the night of 13th November 2003, the Respondents were dispossessed from the suit premises by the Applicants. In respect of this incident also, on the complaint of Respondent No.1, F.I.R. No.160 of 2003 came to be registered against the Applicants at Shahunagar Police Station. Thus, there is sufficient evidence on record to support the case of the Respondents that they were dispossessed from the suit premises without their consent and without following due process of law and it was the reason to file the criminal case of trespass and house breaking against the Applicants.

15] For that matter, there is also one more piece of evidence, namely, the order passed by the Court of Small Causes on 29th April 2004 in Miscellaneous Notice No.940 of 2003 in R.A.E. & R. Suit No.737/1513 of 1996. The said application was filed by the Applicants

for setting aside the *ex-parte* decree of eviction passed against them; for restoration of the suit and for possession of the suit premises, which was received by the Respondents in execution of the decree. The relevant order of the Small Causes Court shows that the Applicants had informed the Court that they do not want to prosecute and proceed with the said application as they had got possession of the suit premises from the Plaintiffs on tenancy basis. Further part of the order passed by the Small Causes Court, on this application is self eloquent. According to it, "this fact was denied and challenged by the landlord-Plaintiff saying that the Defendants had forcefully entered into the possession of the suit premises". Therefore, keeping the controversy open to be decided at the appropriate stage, the Miscellaneous Notice was discharged by the Small Causes Court for want of prosecution. It is thus evident that, since beginning, the case of the Respondents is that, they were dispossessed from the suit premises forcefully, without following due procedure of law. They had not accepted the case of the Applicants that they were put in possession of the suit premises on tenancy basis.

16] In the backdrop of these facts proved on record, there was heavy burden on the Applicants to prove that they had received possession of the suit premises with the consent of Tulshiram, the

original plaintiff-landlord, by following due process of law. According to the Applicants, on the night of 31st October 2003 itself, Tulshiram has put them in possession of the suit premises after accepting the amount of Rs.10,800/- by money-order and further accepting an amount of Rs.8,500/- in cash. To substantiate this case, Applicants have placed reliance on the admission given by Respondent No.1 that the amount of Rs.10,800/- was received by post and further reliance is also placed on the alleged document namely the receipt cum permission, executed by the original landlord Tulshiram. As regards the receipt of the amount of Rs.10,800/- by post, as per the case of the Respondents, the said amount was due towards the arrears of rent, as per the decree of eviction passed in R.A.E. & R. Suit No.737/1513 of 1996. It is a matter of record that such decree was passed and it was put in execution. Therefore, the receipt of that amount by post cannot have much significance to hold that said amount was received by virtue of the compromise arrived at between the original landlord and the tenant.

17] As regards the payment of Rs.8,500/- in cash and delivery of possession of suit premises, except for this receipt there is no other substantive evidence on record. To prove this receipt Exhibit-27, the Applicants have examined the witness by name, Mohd. Waheed Mohd.

Habeed. Though, he has stated that, the receipt bears signature of original Defendant Tulsiram; in his cross-examination, he has admitted that, he is unable to say whether Tulsiram was putting his signature in Marathi or in English. Further, he has admitted that, he was not acquainted with the signature of Tulsiram. In such situation, the trial Court has rightly refused to rely on his evidence. The Applicants have failed to examine the other witness, namely, Raju Shinde, whose signature is appearing thereon. The application preferred by the Applicants for sending this receipt to Handwriting Expert, for his opinion has been rejected and the said order is confirmed by this Court in Appeal From Order No.1076 of 2015 on 29th October 2015. Applicants witness Mr.Manickam Perumal has admitted that he was not personally present or acquainted with the transaction dated 31st October 2003.

18] The trial Court has therefore rightly held that this receipt is though marked as Exhibit-27, it is not properly proved through the evidence of the attesting witness. Moreover, if Tulshiram, the original landlord has issued such receipt, there was no reason for him to lodge complaint with police on the very next day or to inform the Small Causes Court, in Misc. Civil Notice No.940 of 2003 that possession was taken from him forcefully. Apart from that, if such receipt was in

possession of the Applicants, then why they did not produce it before the police, when they were prosecuted for the offence of criminal trespass and house breaking? Why they have also not produced it before the Small Causes Court, when they withdrew their Miscellaneous Notice No.940 of 2003 and specific contention was raised by the Respondents that the Applicants have forcefully taken possession of the suit premises? Therefore, the genuineness and legality of this receipt Exhibit-27 being not properly proved by the Applicants, it becomes difficult to accept the case of the Applicants that they have been lawfully put in possession of the suit premises by the original Plaintiff-landlord.

19] In my considered opinion, therefore, the trial Court has appreciated the evidence on record in its proper perspective and in the limited scope of revisional jurisdiction, this Court cannot enter into re-appreciation of the evidence, unless some perversity is pointed out. As no such perversity is pointed out, this Court cannot substitute its own opinion in the place of the opinion given by the trial Court. As the view taken by the trial Court is also a equally possible which is arrived at view on the basis of the evidence adduced before it, the Civil Revision Application being without merits, stands dismissed.

20] In view of disposal of Civil Revision Application, nothing survives in the Civil Application No.224 of 2018 and hence, it stands disposed of.

[DR.SHALINI PHANSALKAR-JOSHI, J.]

21] After pronouncement of the Judgment, learned counsel for the Applicants seeks stay to the operation of this Judgment and Order, in order to enable the Applicants to approach the Hon'ble Supreme Court.

22] Learned counsel for the Respondents strongly resists this prayer on the count that the Respondents are deprived from possession of the suit premises since last more than 20 years and during pendency of this Civil Revision Application also, there was no stay granted by this Court. It is submitted that the execution application is also filed in the Trial Court and, therefore, no such further period of eight weeks be granted by staying the operation and execution of this order.

23] In my considered opinion, as admittedly till today the decree of possession is not executed, only with an intention to enable

the Applicants to challenge the order of this Court before the Hon'ble Supreme Court, the execution of the order needs to be stayed and is accordingly stayed for the period of eight weeks from today, with a clear understanding that no further extension will be granted.

[DR.SHALINI PHANSALKAR-JOSHI, J.]