

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
CIVIL REVISION APPLICATION (ST.) NO.12103 OF 2018

Madhav Vinayak Deo, Malti Madhav Deo  
through LRs Jayashree Shripad Page ... Applicant  
Vs.  
Dilip Madhavrao Vaidya and others ... Respondents

Ms Madhavi Tavanandi for Applicants.

**CORAM : R. G. KETKAR, J.**  
**DATE : MAY 3, 2018**

**P.C. :**

Heard Ms Tavanandi, learned Counsel for the applicant at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicant, hereinafter referred to as 'defendant No.1(b)', has challenged the judgment and decree dated 15.02.2018 passed by the Appellate Bench of the Small Causes Court at Mumbai (Bandra) in 2(a) Appeal No.26 of 2015. By that order, the Appellate Court allowed the appeal preferred by respondents No.1 and 2, hereinafter referred to as 'plaintiffs', and quashed and set aside the judgment and decree dated 05.05.2015 passed by the learned Judge, court Room No.34 of the Court of Small Causes at Bombay in R.A.E. Suit No.638 of 1994 and decreed the Suit. The defendants are directed to handover possession of room No.10, first floor, Tilak Dham, 8-A Cama Road, Andheri (West), Mumbai 400 058 (for short 'suit premises') to the plaintiffs after the appeal period is over.

3. In support of this Application, Mr. Tavanandi strenuously contended that the learned trial Judge dismissed the Suit filed by the plaintiffs invoking grounds under Sections 13(1)(l), 13(1)(e) and 13(1)

(k) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Act'). As against this, the Appellate Court decreed the Suit on the ground of unlawful subletting under Section 13(1)(e) and non-user under Section 13(1)(k) of the Act. She has taken me through paragraphs 56 to 59 of the trial Court's judgment. She submitted that the Appellate Court held that defendant No.2 was inducted as a sub-tenant. She submitted that the said finding is perverse in as much as the defendant No.2 is a real brother of defendant No.1(a) as also a maternal uncle of defendant No.1(b). She submitted that as parents of defendant No.1(b), namely, Madhav Vinayak Deo and Malti Vinayak Deo, were aged, defendant No.2 was occupying the suit premises temporarily as a caretaker. Defendant No.2 permanently shifted to Pune. The learned trial Judge rightly discarded the ground of unlawful subletting as plaintiff failed to establish that there was transfer of interest in his favour. She submitted that in fact, defendants No.2(a) to 2(c) filed written statement dated 04.05.2010, which was verified at Pune. Even Purshis dated 26.10.2007 was filed by the defendant No.2 adopting written statement of defendant No.1. She submitted that defendant No.2 had shifted to Pune. In short, she submitted that the Appellate court was not justified in decreeing the Suit on the ground of unlawful subletting. She relied upon the following decisions:

- a. ***Vasant Mahadev Pandit Vs. Zaibunnisa Abdul Sattar, 2001 (3) Mh.L.J. 118***; and
- b. ***C.C.YI (Dr.) Medical Practitioner Vs. Janakidevi Anantlal Gupta, 2001 (4) Mh.L.J. 114*** to contend that there is no positive evidence that original tenant-defendant No.1 has put defendant No.2 in exclusive possession of the suit premises. There is no positive evidence of defendant No.1 charging consideration. She submitted that mere occupation of defendant No.2 is not sufficient to infer either sub-tenancy or parting with possession.

4. I have considered the submissions advanced by Ms Tavanandi. I have also perused the material on record. As noted earlier, the Appellate Court has decreed the Suit under Sections 13(1)(e) and 13(1)(k) of the Act. In so far as ground under Section 13(1)(e) is concerned, the same is discussed from paragraph 17 onwards. In paragraph 23, the Appellate Court referred to the decision in *Bharat Sales Limited Vs. Life Insurance Corporation of India*, (1998) 3 SCC 1 and *Gajanan Dattatraya Vs. Sherbanu Hosang Patel*, AIR 1975 SC 2156 where the Apex Court held that the act of leaving the suit premises by the sub-tenant after some time will be of no consequences. In paragraph 29, the Appellate Court noted that the Suit was instituted against the defendant No.1. The summons was served and reported unserved with the remark that defendant No.1 did not reside on the given address. The report was received that the defendant No.1 went to reside at Pune. He could not be served as in the meantime, he died. His heirs were brought on record and the summons on defendant No.2 was served at his address in Pune.

5. The Appellate Court noted that it is the contention of the other defendants that after the death of the defendant No.1, defendant No.2 was residing as a caretaker of the defendant No.1(a). The Appellate Court, therefore, noted that once the defendants accept that defendant No.2 is residing in the suit premises, onus is shifted on the defendants to prove that even after the demise of the defendant No.1, the defendant No.1(a) was residing in the suit premises and defendant No.2 was residing as a caretaker. In such a situation, evidence of defendants No.1(a) and 2 was very material. Though defendant No.2 submitted his examination-in-chief, he could not be cross-examined. In paragraph 30, the Appellate Court dealt with the case of the defendants that defendant No.2 was residing in the suit premises as a caretaker and observed that in the Voters' list of 1983, 1985 and 2007, his name appears. Even the name of the wife of the defendant No.2 appeared in the electoral roll of

1983 and their names continued in the Voters' list of 2007 also. It is in that context, the Appellate Court observed that by no stretch of imagination, any family member, who comes to help his sister and resides with her in her house as a caretaker for few days will try to enter his name in the voters' list and will delete the name of sister for whose help he came in the suit premises. The Appellate Court ultimately held that plaintiffs have established that the suit premises was unlawfully sublet to the defendant No.2.

6. As far as the ground of non-user under Section 13(1)(k) is concerned, that is discussed by the Appellate Court in paragraph 34. It was noted that defendant No.2 came in the suit premises prior to 1993. There was no evidence adduced by the defendants to prove that defendant No.1 and defendant No.1(a) were residing in the suit premises. On the contrary, the evidence on record indicated that in 1993-1994, the defendant No.2 and his wife were residing in the suit premises and not defendants No.1 & 1(a). The Appellate Court, therefore, concluded that plaintiffs proved that defendant left the suit premises prior to six months from the date of institution of the Suit.

7. Ms Tavanandi relied upon the decision of **Vasant Mahadev Pandit** (*supra*). That decision was considered by the Appellate court in paragraph 32. A perusal of that decision shows that in that case, plaintiffs did not establish exclusive possession as also no positive evidence was adduced by the plaintiffs to indicate that defendant was charging consideration. As against this, in the present case, the Appellate Court, after considering the evidence on record, has held that the tenant had shifted to Pune and no evidence is adduced to establish that he was residing in the suit premises. The Appellate court also found that the defendant No.2 was not a caretaker and was illegally inducted as a sub-tenant. In view thereof, decision of **Vasant Mahadev Pandit**

(*supra*) does not apply to the present case.

8. In so far as decision in **C.C.YI (Dr.) Medical Practitioner** (*supra*) is concerned, the learned Single Judge of this Court held that what is contemplated under Section 13(1)(e) is giving of the whole or part of the premises on licence or assignment or transfer of interest of the tenant therein. Mere occupation is not sufficient to infer either sub-tenancy or parting with possession. In my opinion, the said decision is also not applicable in the facts of the present case. The Appellate Court, after considering the evidence on record, has held that plaintiffs have established ground of unlawful subletting under Section 13(1)(e) and non-user under Section 13(1)(k) of the Act. Defendant No.1(b) was not in a position to demonstrate that the findings recorded by the Appellate Court are perverse being based on no evidence or that they are contrary to the evidence on record. Defendant No.1(b) is not in a position to demonstrate that on the basis of the evidence on record, no reasonable or prudent person would have reached conclusions arrived at by the Appellate Court. Merely because on the basis of evidence on record, another view is possible that by itself is no ground for exercising powers under Section 115 of the C.P.C. In the result, the Civil Revision Application fails and the same is dismissed.

9. At this stage, Ms Tavanandi orally prays for stay of the eviction decree for a period of 12 weeks from today. She assures that the defendant No.1(b) and all the adult family members residing with her in the suit premises will file usual undertaking in this Court on or before 08.06.2018, incorporating therein that;

- (a) they are in possession and nobody else is in possession of the suit premises;
- (b) they have neither created third party interests nor parted with possession of the suit premises;

- (c) they will hereafter neither create third party interests nor part with possession of the suit premises;
- (d) they will deposit the entire arrears, if any, within three weeks from today in this Court;
- (e) in case they are unable to obtain suitable orders from the higher Court within twelve weeks from today, they will hand over vacant and peaceful possession of the suit premises to the respondents.

10. In view thereof, notwithstanding dismissal of the Application, subject to the defendant No.1(b) and all adult family members residing with her filing undertaking in the aforesaid terms in this Court on or before 08.06.2018, the eviction decree shall not be executed for a period of twelve weeks from today. It is expressly made clear that in case the undertaking is not filed in the aforesaid terms within the stipulated period and/or in case defendants commit breach of any of the conditions of the undertaking, interim order shall stand vacated without further reference to the Court. In case, defendants are unable to obtain suitable orders from higher Court within a period of twelve weeks and do not hand over possession of the suit premises to the respondents, the respondents will be at liberty to proceed with the matter in accordance with law. Order accordingly.

11. List the Application for reporting compliance on 11.06.2018.

**(R. G. KETKAR, J.)**