

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.358 OF 2015

Messrs Auto Hirers & anr Applicants

vs

Commerce Centre Co-operative Society Ltd .. Respondent

Mr.Y.S.Jahagirdar Senior counsel a/w Ms.Prabha Rathod i/b
Mr.Suraj S.Shah for Applicants

Mr.Vaibhav Mehta I.b.Vaibhav Mehta & Associates for Respondents

CORAM : G.S.KULKARNI, J

DATE: 8th JANUARY, 2018

ORAL JUDGMENT

1. This is a civil revision application of the tenant who suffers an eviction decree dated 6 October 2006 passed by the Small Causes Court at Bombay, in a suit instituted by the respondent-landlord being T.E.& R.Suit No.64/76/2004. In an appeal filed by the applicant before the appellate bench of the Small Causes Court, the eviction decree stands confirmed in the following terms :

ORDER

1. *“ Appeal No.650 of 2006 is dismissed with costs.*
2. *The Appellants/original defendants, do hand over the vacant and peaceful possession of the suit plot I.e Triangular Open plot of land admeasuring 167.62 sq.meters situated in the North West area of the compound of the plaintiffs plot of land bearing C.S.No.732 (part) situate at 78, Tardeo Road Mumbai-400 034 to the respondents/plaintiffs within (90) Ninety days from today i.e.20.04.2015.*
3. *During the said period the Appellants./original defendans shall not part with possession of the suit plot or to create, third party interest in respect of the suit plot.*
4. *Decree be drawn up accordingly.*
5. *Order accordingly.”*

2. Being aggrieved by the concurrent findings of both the Courts below the applicant-tenant has preferred this revision application.

3. In brief the facts are :-

By an agreement dated 28th March 1986 the respondent had let out a triangular plot in the north-west corner of the premises of the respondent-society being part of land bearing CS No.732 (part) (for short”the suit plot”) to the applicants. Prior to the institution of the eviction suit in question as also prior to the coming into force of the Maharashtra Rent Control Act, 1999 (for short “MR Act 1999”) brought into force with effect from 31 March 2000 and during the regime of the erstwhile Bombay Rents, Hotel and

Lodging House Rates Control Act, 1947, (for short the “1947 Act”) disputes had arisen between the parties. The applicant had approached the Small Causes Court in RAD Suit No.1994/1990 seeking a declaratory relief, that the applicant be declared as a tenant in respect of the “suit triangular plot of land.” This suit was decreed by the Small Causes Court by its judgment and order dated 21.01.2003 in the following terms:-

“Suit is decreed.

The plaintiffs are declared as tenant in respect of suit triangular plot of land situate at 78, Tardeo Road, Mumbai-400 034 and it is also declared that they are protected under the provisions of the Bombay Rent Act and are liable to pay only standard rent and permitted increases in respect of the suit triangular plot of land.”

(Emphasis supplied)

4. Subsequent thereto, the respondent by a suit notice dated 12.02.2004 terminated the tenancy of the applicant in regard to the suit plot. The said notice was received by the applicant on 13.02.2004. As the applicant failed to vacate the suit plot, the suit in question came to be instituted by the respondent under section 41 of the Presidency Small Causes Court Act, 1882 and not under the MR Act 1999 seeking a decree of eviction. Section 41 confers jurisdiction on the Court other than the rent jurisdiction. It would be appropriate to extract Section 41 of the Presidency Small Causes Court Act, 1882 which reads thus :

“S.41. Suits or proceedings between licensors and licensees or landlords and tenants for recovery of possession of immovable property and licence fees or rent, except to those to which other Acts apply to lie in Small Causes Court – (1) Notwithstanding anything contained elsewhere in this Act but subject to the

provisions of sub-section (2), the Court of Small Cause shall have jurisdiction to entertain and try all suits and proceedings between a licensor and licensee, or a landlord and tenant, relating to the recovery of possession of any immovable property situated in Greater Bombay, or relating to the recovery of any licence fee or charges or rent therefrom, irrespective of the value of the subject matter of such suits as proceedings.

(2) Nothing contained in sub-section (1) shall apply to suits or proceedings for the recovery of possession of any immovable property, or of licence fee or charges of rent thereof, to which the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the Bombay Government Premises (Eviction) Act, 1955, the Bombay Municipal Corporation Act, (the Maharashtra Housing and Area Development Act, 1976) or any other law for the time being in force apply.”)

5. The basic premise on which the respondent-plaintiff filed the eviction suit was that the tenancy of the applicant being validly terminated by the suit notice dated 12.2.2004, occupation of the suit plot by the applicant-defendant was rendered illegal. It was contended that in view of the repeal of the 1947 Act by the MR Act, 1999 being brought into force on 31.3.2000, the applicant had lost protection which was available to a tenant under the erstwhile 1947 Act as no protection is available to a tenant of an open plot of land under the MR Act, 1999 and thus the respondent was entitled to a decree of possession once tenancy was terminated by the suit notice as per the provisions of the Transfer of Property Act. The respondent thus contended that though there was a declaration in favour of the applicant to be a tenant in the earlier suit, it was of no consequence and would not enure to the benefit of the applicant as under the MR Act, 1999.

6. The applicant defended the suit *inter alia* on the ground that the suit premises was not merely an open plot of land but there existed a structure which was constructed by the applicant since last more than 20 years prior to the filing of the suit in question and thus the case of the respondent/plaintiff that the suit plot is the open plot of land was not correct. The relevant averments are in paragraph 3,4,5 and 9 of the written statement. The applicant thus contended that the tenancy of the applicant was protected under the Maharashtra Rent Control Act, 1999 and objected to the jurisdiction of the Court to entertain a suit under section 41 of the Presidency Small Causes Court Act. The parties led their evidence. It has come in evidence that though the applicant was in occupation some shop premises being shop nos.7 and 8 in the building of the respondent, however, such occupation had no connection whatsoever with the tenancy of the triangular open plot of land which was independently granted to the applicant under the agreement dated 20.03.1986.

7. The learned trial Judge by the judgment and order dated 06.10.2006 held that the evidence was clear that the suit premises was “*an open plot of land*” and that the applicant was not entitled to have a protection under the MR Act 1999, as open plot of land did not fall within the definition of “premises” as defined under section 7 (9) of the MR Act 1999 and therefore

the protection to a tenant under the MR Act 1999 was not available to the applicant. It was thus held that the suit under section 41 of the Presidency Small Causes Court Act was maintainable. It was observed that in view of the clear provisions of the MR Act 1999, suits which were pending on the date of commencing of the MR Act 1999 i.e. on 31.03.2000, were to be disposed of as per the provision of the repealed Bombay Rent Hotels and Lodging Houses Rates Control Act, 1947 and just because the applicant was declared a protected tenant in Suit No.1994/1990, which was under the repealed 1947 Act, the applicant would not be entitled to any protection under the MR Act 1999. In regard to the defence of the applicant that the suit notice dated 12.02.2004 also did not comply with the requirement of the law the learned trial Judge did not accept the said contention of the applicant and it was held that the suit notice appropriately terminated the tenancy and the suit notice was legal and valid. The learned trial Judge accordingly decreed the suit directing eviction of the applicant from the suit premises namely the open plot of land.

8. The applicant being aggrieved by the judgment and decree passed by the learned trial Judge approached the Appellate bench of the Small Causes Courts (for short 'the Appellate Court'). It can be seen from the grounds as raised in the appeal, that the applicant reiterated the contentions as urged

before the trial Court however in a slightly different form, in as much as the applicant *inter alia* contended that the suit premises was a open space with a structure within the compound wall and that the compound wall was part of the suit premises. It is for this reason the suit premises would fall within the definition of premises under section 7 (9) of the MR Act 1999. The applicant's contention this time was that there is a difference between “a open plot of land” and “open space forming part of open land.” It was contended that the definition of of premises excludes “open plot of land” but does not exclude “open spaces of land.” It was contended that under the Municipal laws it was compulsorily to keep open space and therefore the open space in question cannot be treated, read and/or dealt in isolation but necessarily is required to be taken as a part of the plot of land on which the respondent's building was constructed and standing. Hence, the suit premises were not excluded from the definition of 'premises' under the MR Act 1999. The appellate Court, however, did not accept the said contentions as urged on behalf of the applicant. The appellate Court held that it was abundantly clear that what was let out to the applicant was an open plot of land. It was observed that even considering the definition of “premises” under the MR Act 1999, the argument of the applicant that only because the open plot of land falls within the compound of the applicant, it would be required to be taken as “premises appurtenant” cannot be accepted. The appellate Court also confirmed the

findings of the learned trial Judge on the suit notice to be legal and valid.

9. Mr.Jahagirdar, learned senior counsel for the applicants in assailing the concurrent findings against the applicant as recorded by the Courts below has made two-fold submissions. It is firstly contended that both the Courts have misconstrued the provisions of section 7 (9) of the MR Act 1999 which defines “premises.”. It is submitted that the definition of “premises” under sub-clause (i) of section 7 (9) of the MR Act 1999 includes “garden, ground garages, if any appurtenant to such building or part of building.” The contention is that suit premises namely the open plot of land is appurtenant to the building of the respondent-society and thus the suit premises would enjoy the protection under the MR Act 1999. In supporting this contention my attention is drawn to the grounds as raised in the appeal memo of the applicant as filed before the appellate Court and more particularly ground nos.j,k,l,m and n appearing at page 119 and 121 of the paper book. Mr.Jahagirdar would support this contention relying on a decision of the Supreme Court in **International Airport Authority Employees Union vs International Airports Authority of India**¹. The second contention of Mr.Jahagirdar, is that both the Courts have erred in holding that the suit notice was legal and valid. It is submitted that a perusal of the suit notice

1 (2001) 1 Supreme Court Cases 205

would indicate that the suit notice did not terminate the tenancy and therefore it would not suffice the requirement of law to be a valid notice terminating the tenancy.

10. On the other hand, Mr.Mehta learned counsel for the respondent-landlord has supported the judgments of the Courts below. Referring to the findings as recorded by the trial Court and the appellate Court it is submitted that both the Courts have correctly appreciated the evidence on record and considering the definition of premises as defined under section 7 (9) of the MR Act 1999 have appropriately held that a simpliciter open plot of land as let out to the applicant would not fall within the definition of premises. It is submitted that the word 'appurtenant' as used in sub-clause (i) of section 7 (9) is required to be read in conjunction with the former and the latter part of the provision and thus both the Courts have appropriately considered the said provision and decreed the respondent's suit. In support of the submission that the word 'appurtenant' is required to be considered and applied only to structural premises which would be let out, learned counsel for the respondent has placed reliance on the decision of this Court in **Morarji Goculdas Deoji Trust & ors vs Madhav Vithal Kudwa**². As regards the contention of the applicant on the suit notice not being legal and valid, my attention is drawn to

² AIR 1983 Bombay 68

the findings as recorded by the Courts below whereby the Courts have held the suit notice validly terminated the tenancy. It is thus submitted that there is no error/illegality or any perversity for the Courts to come to a conclusion that the notice is legal and valid.

11. Having considered the rival submissions and having gone through the judgments of the Courts below, in my opinion the contentions as urged by Mr.Jahagirdar learned senior counsel for the applicants on none of the counts can be accepted. It is not in dispute that what was let out to the applicant was an open plot of land under the agreement dated 20.03.1986.It is also not in dispute that in the prior proceedings namely RAD Suit No.1994/1990, the applicant had sought a relief that the applicant was a tenant of the open plot of land and nothing else, which can be clearly seen from the decree granted by the Small Causes Court in favour of the applicant and as noted above. The contention of the respondent/landlord is that under the rent law now prevalent namely the MR Act 1999, the protection which was granted to a tenancy of an open land has been taken away by virtue of the definition of “premises” as contained in section 7 (9) of the MR Act 1999.

12. As the controversy revolves around the issue as to whether an open plot of land would fall within the definition of “premises” under section 7

(9) of the MR Act 1999, it would be appropriate to note the definition of “premises” as contained under section 7 (9) of the MR Act 1999 which reads thus:

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

(1)

(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;”

13. A plain reading of the above provision clearly indicates that for the purposes of the MR Act 1999, premises would be any building or part of a building which is let out or given on licence separately which may include garden, ground, garages and out houses if any, appurtenant to such building or part of a building, as sub-clause (i) of the provision would provide. As also it would include any fitting affixed to such building or part of a building provided for the more beneficial enjoyment of the premises. Thus, considering the clear language of the said definition, simplicitor “open plot of land” certainly does not fall within the definition of 'premises'. Thus, there is much substance in the contention as urged on behalf of the respondent as also correctly held by the Courts below that the suit plot being an open of land would not fall within the definition of 'premises', considering the agreement

between the parties, as the suit plot is not appurtenant to any tenancy of a building or a structure which is let out to the applicant. It is not a case of the applicant that some tenement in the structure/building of the respondent society is let out to the applicant under the lease agreement dated 28th March, 1986 to which this open plot is appurtenant. The provision is required to be read in its entirety to ascertain the legislative intent. There cannot be any isolated reading of the word “appurtenant” as falling in sub-clause {i} of the definition of premises. If an interpretation as contended on behalf of the applicant is to be accepted, it would be nothing but doing violence to the legislative intent, so as to include something which the legislature has categorically avoided to include namely, “tenancy of an open plot of land.”

14. In the facts of the case, it is clear that the applicant was not granted any tenancy which would include some part in the building along with the open plot of land. It is only the open plot of land which has been independently let out and thus the contention as urged on behalf of the applicant that the word 'appurtenant' is required to be read as forming part of the building, with which the applicants have no connection whatsoever cannot be accepted. If this contention is accepted it would also amount to accepting something which is completely alien to the facts on record namely that the tenancy which is granted to the applicant is in respect of the open plot and no

other premises in the building. The contention of Mr.Jahagirdar that it is a open plot within the compound wall and being an open space compulsory required to be maintained under the municipal laws also cannot be accepted. Such a hypothesis, contrary to the agreement of tenancy which is only in respect of open plot of land, is totally untenable. This submission of Mr.Jahagirdar does not have any foundation on the facts and the evidence on record. Also the contention as urged on behalf of the applicant that the premises in question are commercial premises and therefore, the open ground as let out to the applicant would be required to be treated as 'appurtenant' to the building cannot be accepted, in view of the clear definition of the 'premises' under section 7(9) of the Act. The submission in fact again goes contrary to the agreement of tenancy and the admitted position that what was let out is the open plot of land. The learned counsel for the respondents would be justified in placing the reliance on the Division Bench of this Court in **Morarji Goculdas Deoji Trust & ors vs Madhav Vithal Kudwa** (supra) where the Court has interpreted the word 'appurtenant' though under the provision of section 5 (8) (b) of the Bombay Rent Act, the Court had observed that the word 'appurtenant ' has a distinct and definite meaning, it would import nothing more than what is strictly pertaining to the subject matter of the grant. This logic would also apply in the present facts and in considering the definition of 'premises' under the MR Act 1999. The reliance of Mr.Jahagirdar

on the decision in *International Airport Authority Employees Union vs International Airports Authority of India* (supra) would surely not assist Mr.Jahagirdar as it is not a decision interpreting any rent legislation but dealing with an issue under the Contract Labour (Regulation and abolition) Act,1970. It is in this context the Court had considered that the car parking areas would be part of the building. The Court in this case was not examining any legislative provision which would either define building or premises.

15. In the context in hand and the conclusion I have reached on the interpretation of the definition of 'premises' under section 7 (9) of the MR Act 1999 it would be useful to refer to a decision of the learned single Judge of this Court in the case of **Savitribai Vishnupati Vaske & ors vs Faruk Abdulrahim Patel & ors** wherein it is held that the said definition does not apply to lands. In paragraph 15 of the report the Court observed thus :-

15. “ Considering the provisions of sections 2(1) to 2 (4) and section 6 of the Bombay Rent Act, it would be clear that the emphasis given therein is to the applicability of the said Act to the various areas as also to the premises let out for the purposes set out therein. It is not in dispute that the definition of the “premises” given in section 7 (9) of the M.R.Act the open land is not included. It is also not in dispute that as per section 58 (1) (a) of the M.R.Act after commencement of the M.R.Act, the Bombay Rent Act is repealed and is not applicable. The conjoint reading of the sections 2 (2), 7 (9) and section 58 of the M.R.Act leads to an irresistible conclusion that the provisions of the M.R.Act are not applicable to the open land. Now the position that emerges is that with effect from 1st April 2000 the Bombay Rent Act stood repealed by the M.R.Act and the M.R.Act is applicable. However, by virtue of section 7 (9) of the M.R.Act, the said Act is not applicable to the open land. In view of this, the parties are governed by the provisions of the T.P.Act.”

16. As regards the second contention as urged on behalf of the applicant that the suit notice was illegal as it did not terminate the tenancy, the argument itself was pale and lackluster to displace the findings of the Courts below on law. The argument cannot be accepted for the reason that the suit notice clearly recorded, an intention on the part of the respondent to terminate the tenancy as the respondent recorded that the applicant should quit and vacate the suit premises. Both the Courts have correctly held that the suit notice was legal and valid.

17. As a sequel to the above discussion, I neither find any perversity or any irregularity nor any material irregularity, in the Courts below exercising jurisdiction vested in them. The revision application is without any merit. It is accordingly rejected with costs.

18. The applicants are directed to hand over the vacant possession of the suit premises to the respondent within a period of twelve weeks from today. Ordered accordingly.

(G.S.KULKARNI, J)