

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.390 OF 2018
WITH
CIVIL APPLICATION NO.470 OF 2018

Snehal Shridhar Joshi ...Applicant

vs.

Waman Dharma Mhatre ...Respondent

Mr. R.R. Pandit a/w. Premanand Torne, for the Applicant.
Mr. S.M. Patil, for the Respondent.

CORAM : M. S. SONAK, J.

DATE : DECEMBER 19, 2018

P.C.:

. Heard Mr. Pandit, learned counsel for the Applicant and
Mr. Patil, learned counsel for the Respondent.

2. The challenge in this Civil Revision Application is to the
orders dated 27th July, 2009 and 12th September, 2017 made by
the trial Court and the Appeal Court decreeing the Respondent's
suit for eviction of the Applicant on the ground of non user of the
suit premises.

3. Mr. Pandit, learned counsel for the Applicant for the
submits that the Respondent, despite notice, the Respondent failed

to maintain the suit premises in a state of tenantable repair. He submits that the Respondent got disconnected the electricity and water supply to the suit premises. The Applicant was therefore, constrained to take out proceeding for restoration of these essential supplies. Orders were also obtained for restoration of essential supplies. However, the orders could not be implemented because the electricity department claimed exorbitant arrears on behalf of the previous meter owner. Mr. Pandit, therefore submits that this is not a case of non user of the suit premises but the case where the Respondent rendered the user of the suit premises, almost impossible. He submits that there is documentary evidence on record that the Respondent is not even the owner of the suit premises but it is his wife, who is the owner. On this ground, he submits that the decree of eviction warrants interference.

4. Mr. Patil, learned counsel for the Respondent defends the impugned judgment and decrees on the basis of reasoning reflected therein. He submits that there are concurrent findings of fact which suffer from no perversity and therefore this Petition may be dismissed. He points out that the Applicant is not at all using the suit premises having acquired different premises. He submits

that the Applicant want to hold on suit premises in order to extort some money from the Respondent, therefore submits that Revision Application may be dismissed.

5. The rival contentions now fall for determination.

6. In the present case, there are concurrent findings of fact recorded by the two Courts that the Applicant failed to use the suit premises for more than 6 months prior to the institution of the suit. The Petitioner has failed to demonstrate any perversity in the record of such findings of fact by the two Courts. Therefore, there is no case made out to warrant interference with the impugned order in the exercise of revisional jurisdiction under Section 115 of C.P.C.

7. The so called notice dated 18th March, 1996 by which the Applicant is alleged to have called upon the Respondent to repair the suit premises was neither produced on record nor exhibited in the course of evidence. The Applicant is not entitle to produce such notice for the first time in this Revision Application, particularly when the address as well as receipt of which notice is

disputed by the Respondent. If such notice was indeed sent, then, there is no explanation as to why the same was not tendered in evidence before the trial Court.

8. There is no material as such on record with the essential supplies were discarded by the Respondent or whether the essential supplies came to be disconnected on account of payment of the electricity and water supply bills. In any case, the material on record clearly indicates that though orders were obtained for restoration of essential supplies. The same were never acted upon or implemented. The contention that the applicant did not insist upon the implementation of the order for supply of electricity connection because the electricity department claim some arrears accumulated by the previous meter owner is neither borne from the material on record nor can it be even otherwise accepted. If the Applicant had reservation about clearing the arrears of the previous meter owners, then, it is reasonable to expect that the Applicant who take out proceeding for resisting such claim by the electricity department, as a precondition for restoration of electricity connection. The Applicant, it appears were contend with the disconnection of essential supplies. In such

circumstances, the inferences drawn by the two Courts that the Applicants were neither using the premises nor were they interested in using the premises, is in legitimate and warrants no interference.

9. The Applicant failed to produce on record any evidence as regards the user. In contrast the Respondent deposed to the case pleaded by them. Upon appreciation of evidence on record, the two Courts have recorded findings of fact on the aspect of non user of the suit premises by the Applicant for a period of excess of six months prior to the date of institution of suit. As noted earlier, there is no perversity in the record of such findings of fact.

10. The contention that the Respondent is not at all the owner of the suit premises but the Respondent's wife is the owner of the suit premises, is raised for the first time in this Revision Application. Apart from the fact that such contention is highly belated, even otherwise, the same is misconceived. Admittedly, the applicant were paying rent to the Respondent and all this while had accepted the Respondent as their landlord. In litigation of this nature, it is possible that the landlord may not be a perfect title

holder, what is relevant in such matter is a relationship of landlord and tenant. It is too late to entertain the contention that the Respondent is not the owner of the suit premises. The material on record overwhelmingly indicates that the Respondent is a landlord in respect of the suit premises and this was more than sufficient for the Respondent to maintain the suit for eviction against the Applicant.

11. For all the aforesaid reasons, no case is made out to interfere with the concurrent findings of fact recorded by the two Courts in the exercise of revisional jurisdiction under Section 115 of CPC.

12. This Civil Revision Application is, therefore liable to be dismissed and is hereby dismissed.

13. There shall be no order as to costs.

14. Record & proceedings to be returned to the trial Court.

(M. S. SONAK, J.)