

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 537 OF 2016

V. Chandrasekaran s/o. Venkatachalam	...Applicant
<i>Versus</i>	
Shri R Subramaniam And Ors	...Respondents

....
Mr. Dharmendra M. Joshi, Advocate for the Applicant.
Mr. D.B. Savant, Advocate for the Respondents.
....

CORAM : R. G. KETKAR, J.

DATE : 03rd JULY, 2018

P.C.

1. Heard Mr.Dharmendra Joshi, learned Counsel for the applicant and Mr.D.B. Savant, learned counsel for respondent No.1, at length.
2. By this application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicant, hereinafter referred to as 'defendant No.5', has challenged the judgment and decree dated 6.5.2016 passed by the Appellate Bench of the Small Causes Court at Bombay in (P) Appeal No.159/2010. By that order, the Appellate Court allowed the appeal preferred by respondent No.1, hereinafter referred to as the 'plaintiff', and quashed and set aside the judgment and decree

dated 18.2.2010 passed by the learned Judge, Court Room No.6 of the Small Causes Court at Bombay in L.E. Suit No.24/24 of 2002 and directed the defendant herein to hand over possession of shop No.11, SPRJ Trust Building, Cama Lane, Ghatkopar (W), Mumbai – 400 086 to the plaintiff within 90 days from the date of the order. The defendant was also restrained from parting with the possession of suit premises in any manner whatsoever in favour of the third party till handing over possession of the suit premises by the defendant to the plaintiff.

3. In support of this application, Mr.Joshi strenuously contended that the suit is filed by the plaintiff through his Constituted Attorney. The Constituted Attorney was in the employment of the plaintiff since 1986. He submitted that the plaintiff came with the case that defendant No.5 was inducted as a licensee in the year 1984 or in the year 1987 or in the year 1989. In other words, the plaintiff is not sure about the time when defendant No.5 was inducted in the suit premises. That apart, the Constituted Attorney did not have personal knowledge as he was employed in the year 1986.

4. Mr. Joshi further submitted that the plaintiff claims to be tenant in respect of the suit premises. He being a tenant, could not have created the alleged licence in favour of defendant No.5. The

plaintiff has not established handing over possession of the suit premises to defendant No.5. The alleged licence is oral and not in writing. The plaintiff has also not proved that the licence fee for the suit premises was Rs.800/- per month. No notice of termination of licence till date was issued.

5. He submitted that the rent receipts were obtained in the name of the plaintiff sheerly on account of respect defendant No.5 has towards the plaintiff as they both coming from the same State. He submitted that the learned trial Judge after appreciating the evidence on record had dismissed the suit. The Appellate Court was not justified in decreeing the more so when earlier Constituted Attorney of the defendants had instituted the suit in the City Civil Court was dismissed.

6. On the other hand, Mr.Savant supported the impugned order.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. A perusal of the impugned order shows that in paragraph-16, the Appellate Court has referred to the evidence adduced by Janson George (PW-1). In paragraph-17, the Appellate Court considered the evidence adduced by defendant No.5. Defendant No.5 deposed that tenancy was obtained by him. However deposed that the

tenancy was obtained by him, rent receipts were issued ostensibly in the name of the plaintiff. The Appellate Court considered the rent receipts at Exhibits-42 and 44 collectively which bear the name of the plaintiff across the column of 'tenant's name'. The Appellate Court, therefore, concluded that the plaintiff is a tenant of the suit premises and defendant No.5 cannot claim tenancy. In paragraph-18, the Appellate Court also considered reliance placed by defendant No.5 on the electricity bills as also documents at Exhibits-45 and 46 from the office of M.T.N.L.. The Appellate Court considered the registration certificate under Bombay Shops and Establishment Act, 1948 (Exhibit-48), licence issued by Municipal Corporation of Greater Mumbai (Exhibit-50), licence under the Prevention of Food Adulteration Rules (Exhibit-51), Certificate of Registration under the Maharashtra Value Added Tax Act, 2002.

8. In paragraph-19, the Appellate Court referred to the notice of demand at Exhibit-54 issued under Bombay Sales Tax Act. After considering the evidence on record, in paragraph-20, the Appellate Court concluded that defendant No.5 is not a tenant in respect of the suit premises. Defendant No.5 himself came with the case that he is in the suit premises since, 1984. Defendant No.5, therefore, cannot claim to be either protected licensee under Section 15A or lawfull sub-let

under Section 15(2) of the Act. In other words the status of defendant No.5 is that of a licensee. Section 52 of the Indian Easement Act, 1882 defines the expression 'license'. Section 52 reads thus :

“52. "License defined".-- Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence.”

9. The plaintiff had permitted defendant No.5 to occupy the suit premises. Defendant No.5 was occupying the suit premises as a licensee. Mr. Joshi submitted that till date the plaintiff has not terminated the alleged licence. The Appellate Court has considered this aspect in paragraph-27 and observed that the plaintiff has terminated the licence of the defendants.

10. After considering the material on record, I do not find that the Appellate Court committed any error in passing the impugned order thereby decreeing the suit. Defendant No.5 was not in a position to demonstrate that the findings recorded by the Appellate Court are perverse, being based upon no evidence or that they are contrary to the evidence on record. Defendant No.5 was also not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the Appellate Court. Merely because on the basis of evidence on record another view is possible, that itself is no ground for invocation of powers under Section 115 of

C.P.C. Hence, no case is made out for invocation of powers under Section 115 of C.P.C. Civil Revision Application fails and the same is dismissed with no order as to costs.

11. At this stage, Mr. Joshi prays for stay of the eviction decree for a period of eight weeks from today. Mr. Joshi states that the applicant is in possession and they have neither created third party interest nor parted with the possession. They will hereafter neither create third party interest nor part with the possession. He further states that the applicants and all adult family members residing/using the suit premises are ready and willing to give usual undertaking within three weeks from today. Learned Counsel for the respondents opposes said prayer.

12. Having regard to the fact that applicant desires to challenge this order before the Apex Court, in my opinion, ends of justice would be met by staying the eviction decree for a period of eight weeks from today subject to the applicant and all adult members residing with them giving usual undertaking to this Court within three weeks from today incorporating therein:

- (i) that they are in actual possession of the suit premises and nobody else is in possession;
- (ii) that they have so far neither created third party interest nor

parted with the possession of the suit premises;

- (iii) that they will hereafter neither create third party interest nor part with the possession of the suit premises;
- (iv) that they will pay the arrears of rent, if any, to the respondents within three weeks from today; and
- (v) that in case the applicant are unable to obtain suitable orders within eight weeks from today from the higher Court, they will deliver vacant and peaceful possession of the suit premises to the respondents.

13. In view thereof, notwithstanding dismissal of Civil Revision Application, the eviction decree shall remain stayed for a period of eight weeks from today, subject to the applicant filing undertaking in the aforesaid terms within three weeks from today, with copy in advance to the other side. In case the applicant does not file undertaking in the above terms and/or arrears of rent are not paid within three weeks from today, the interim order shall stand vacated without further reference to the Court.

14. List the application for reporting compliance on 31.7.2018.
Order accordingly.

(R. G. KETKAR, J.)