

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 406 OF 2018

M/s Jayantilal Investments

...Applicant

Versus

Mr. Purshottam Devji Patel

And Anr.

...Respondents

....

Mr. Durgaprasad Sabnis i/b. Lex Firmus for the Applicant.

Mr. Atul Damle, Senior Advocate a/w. Ashish Dubey, Advocate for Respondent No.2.

....

CORAM : R. G. KETKAR, J.

DATE : 9th OCTOBER, 2018

P.C.

1. Heard Mr.Durgaprasad Sabnis, learned Counsel for the applicant and Mr.Atul Damle, learned Senior Counsel for respondent No.2, at length.
2. By this application under section 115 of the Code of Civil Procedure, 1908, applicant, hereinafter referred to as 'plaintiffs' have challenged the judgment and decree dated 4th May, 2018 passed by the Appellate Bench of the Court of Small Causes at Mumbai (Bandra Branch) in P.S.C.C Appeal No.64 of 2017. By that order, the Appellate Court partly allowed the appeal preferred by the respondents, hereinafter referred to as 'defendants No.1 and 2' and set aside the trial Court's decree dated 6th May, 2016 passed in T.E & R Suit No.68/80 of 2003. The Appellate Court remitted the matter to the trial Court with direction to give opportunity to both the

sides to adduce evidence.

3. In support of this application, Mr. Sabnis submitted that the plaintiffs had let out open piece of land, more particularly described in paragraph 6 of the plaint. As the suit premises is open piece of land, provisions of the Maharashtra Rent Control Act, 1999 (for short 'Act') are not applicable. The learned trial Judge decreed the suit on 6th May, 2016. He invited my attention to the findings recorded by the Appellate Court in paragraph 16 where the Appellate Court made reference to paragraph 24 of the plaint and was of the view that in paragraph 24, the plaintiffs have described structures of the suit property as C.T.S. No.604/30. 31.32 at Malad, S.V. Road of Village Malad (North), S.V. Road, Malad (West). Mumbai 400 064. He submitted that the said finding is factually incorrect and contrary to record. Mr. Sabnis submitted that on 8th September, 2016, the plaintiffs have taken possession of the suit premises together with structure standing thereon and subsequently they have demolished the structures. In other words, he submitted that the plaintiffs have executed the decree.

4. The application was heard on 6.8.2018. On that date, the learned Counsel for the plaintiffs sought leave to amend C.R.A. for incorporating the fact that the plaintiffs have executed the decree. As C.R.A. was pending admission, leave to amend was granted. Amendment was to be

carried out within one week. After the amendment is carried out notice was issued to the respondent returnable on 10.9.2018. The parties were put to notice that subject to the time constraint and convenience of the Court, application will be disposed of finally on that date. Notice was to further indicate that despite service, if the respondents fail to appear, the Court will proceed to decide the application on its own merits. In the meantime, ad-interim order in terms of prayer clause (c) was granted. In addition to that interim relief, the proceedings of T.E. & R Suit No.68/80 of 2003 were stayed.

5. Mr. Sabnis submitted that while allowing the appeal, the Appellate Court committed serious error apparent on the face of record by observing in paragraph-16 that in paragraph-24 of the plaint, the plaintiffs described the structure of the suit property as C.T.S. No.604/30, 31, 32 Malad, S.V. Road of village Malad (North), S.V. Road, Malad (West), Mumbai – 400 064 along with the structure thereon. This is factually incorrect and contrary to the record. He, therefore, submitted that the application requires consideration.

6. On the other hand, Mr. Damle supported the impugned order. He invited my attention to the written statement filed by the defendants and in particular paragraph-2. In paragraph-2, the defendants submitted that they are tenants in respect of the land admeasuring 800 square yards and the

structures standing thereon. In paragraph-12, the defendants reiterated that they are tenants in respect of total area of land admeasuring 800 square yards and also together with chawl standing thereon. He invited my attention to paragraph-10 of the plaint where the plaintiffs contended that the defendants have relied upon the alleged agreement of lease dated 1.1.1975 before the Revenue Authorities under which Shri Bhalchandra V. Mantri and Shri Rajendra B. Mantri therein are described as owners being seized and in possession of the property purportedly leased to the defendants, namely, C.T.S. No.143/8 (part). The plaintiffs contended that the purported agreement of lease dated 1.1.1975 is void under the law.

7. Mr. Damle submitted that in paragraph-14 of the written statement, the defendants contended that there is an agreement of lease dated 1.1.1975 for a period of 98 years. They denied that said lease is void under the law as alleged by the plaintiffs.

8. Mr. Damle invited my attention to the findings recorded by the learned trial Judge and in particular paragraph-7 where the learned trial Judge observed that the defendants remained absent and failed to cross-examine the plaintiffs witness. The defendants have also not adduced any evidence in support of their defence and, therefore, the entire evidence of the plaintiffs remained unchallenged. The learned trial Judge held that the plaintiffs proved that the defendants are their tenant in respect of a open

land only and the defendants failed to establish that they are tenants in respect of open land together with chawl standing thereon. As against this, the Appellate Court held that the the defendants have established that they are tenants in respect of open land together with chawl standing thereon. He invited my attention to the agreement of lease dated 1.1.1975 and in particular clause-1 thereof. Clause-1 describes the property given on monthly lease which includes structure consisting of three rooms. As against this, Mr. Sabnis submitted that the signatures of Rajendra B. Mantri and Bhalchandra V. Mantri are made by one and the same person. He also disputed execution of the agreement of lease by the predecessor in title of the plaintiffs in favour of the defendants.

9. I have considered the rival submissions advanced by the learned Counsel for the parties. I have also perused the material on record. By the impugned order the Appellate Court has allowed the appeal and set aside the decree by the trial Court and remitted the matter to the trial Court with direction to give full opportunity to both the parties to adduce their evidence. The parties were directed to appear before the trial Court on 30.6.2018.

10. A perusal of the record shows that on one hand the learned trial Judge while decreeing the suit held that the plaintiffs have established that what was let out to the defendants was open piece of land. A perusal of paragraph-7 of the trial Court's order shows that after filing of the written

statement, the defendants remained absent and failed to cross-examine the plaintiffs witness. The defendants also did not adduce any evidence in support of their defence and that entire evidence of the plaintiffs remained unchallenged.

11. As against this, the Appellate Court held that the defendants have established that they are tenants in respect of open land together with chawl standing thereon. It is no doubt true that in paragraph-16, the Appellate Court referred to paragraph-24 of the plaint where according to it the plaintiffs have described that the suit property was comprising of open land together with structure thereon. A fair reading of the plaint and in particular paragraphs-6 and 24 does not *prima facie* indicate that what was let out to the defendants was open land together with structures. Nonetheless a perusal of the agreement of lease dated 1.1.1975 and in particular clause-1 thereof *prima facie* supports the contention of the defendants that open land together with construction comprising of three rooms was let out to the defendants. Thus there is serious controversy between the parties as regards the premises that was let out to the defendants. The defendants neither cross examined the plaintiffs' witness nor adduced evidence in support of their case. In my opinion, no case is made out for interfering with the impugned order as by that order the Appellate Court has remitted the matter to the trial Court with a direction to give full opportunity to both the parties to adduce

evidence.

12. During the course of hearing, I suggested to Mr. Sabnis that as the plaintiffs have executed the decree, without recording reasons, the Court will maintain the impugned order and give opportunity to the plaintiffs to adduce additional evidence as also to the defendants to cross-examine the plaintiffs witness and the defendants will be permitted to adduce evidence. The matter was accordingly adjourned till today for passing order. Upon taking instructions, Mr. Sabnis submitted that the plaintiffs are not agreeable to this suggestion.

13. In the light of the aforesaid discussion, I do not find that any case is made out for interfering with the impugned order. The plaintiffs are 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. The plaintiffs are 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.

14. It is made clear that while deciding the suit the learned trial

Judge will not be influenced by the observations made by the Appellate Court or the observations made by this Court. The learned trial Judge will decide the suit on the basis of evidence on record and in accordance with law. All contentions of the parties are expressly kept open.

15. By order dated 6.8.2018, ad-interim order in terms of prayer clause (c) was granted thereby the impugned order was stayed. As the plaintiffs have executed the decree and have obtained possession by demolishing the structures standing thereon they will neither create third party interest nor part with the possession of the suit property during pendency of the suit and will abide by the outcome of the suit.

16. At this stage, Mr. Sabnis orally applies for continuation of the ad-interim order for a period of twelve weeks from today. As the plaintiffs desire to challenge this order in higher Court, I find that the request made by Mr. Sabnis is reasonable. Hence, notwithstanding dismissal of C.R.A., the proceedings of T.E. & R. Suit No.68/80 of 2003 are stayed for a period of twelve weeks from today. The plaintiffs shall, during the pendency of the suit, neither create third party interest nor part with the possession of the suit property. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)

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Digitally signed
by Pradipkumar
Prakashrao
Deshmane
Date: 2018.10.11
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