

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.107 OF 2017
WITH

CIVIL APPLICATION NO.55 OF 2017 IN C.R.A.NO.107 OF 2017

Amrut Pandurang Shinde (deceased) through LRs ... Applicants

Vs.

Pushpaben S. Shah (decd) through LRs ... Respondents

Ms Prachi Khandge i/b. M. P. Vashi Associates for Applicants.

Ms Gauri Godse i/b. Mr. Parag Tilak for Respondent No.1/4.

Dr. D. S. Hatle i/b. Mr. Deepak Jamsandekar for Respondents No.2/1 to 2/8.

CORAM : R. G. KETKAR, J.

DATE : AUGUST 2, 2018

P.C. :

Heard Ms Khandge, learned Counsel for the applicants, Ms Godse, learned Counsel for respondent No.1/4 and Dr. Hatle, learned Counsel for respondents No.2/1 to 2/8 at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicants, hereinafter referred to as 'defendants', have challenged the judgment and decree dated 19.11.2005 passed by the learned II Joint Civil Judge, Junior Division, Kalyan in Regular Civil Suit No.140 of 1997 as also the judgment and decree dated 12.03.2014 passed by the learned Ad-hoc District Judge-3, Kalyan in Civil Appeal No.9 of 2006. By these orders, the Courts below decreed the Suit instituted by the plaintiffs on the ground of additions and alterations of permanent nature without written permission of the landlord as contemplated by Section 13(1)(b) of the Bombay Rents, Hotels, Lodging and House Rates Control Act, 1947 (for short 'Act').

3. In support of this Application, Ms Khandge strenuously contended that plaintiffs admitted that they have not established the ground under Section 13(1)(b) of the Act. She submitted that the Courts below have not recorded any finding that the alleged additions and alterations are of a permanent nature. She invited my attention to the oral evidence adduced by the parties and in particular evidence of the plaintiffs and the defendants. She submitted that the alleged additions and alterations were made some time in the year 1991 and till filing of the Suit, plaintiffs never objected to the additions and alterations. In any case, the additions and alterations are made for the beneficial enjoyment of the suit premises. She invited my attention to Section 13(1)(b) of the Act to contend that the decree under that provision can be passed only when the Court records a finding that the additions and alterations are carried out on the premises. In the instant case, it has come on record that the additions and alterations are carried out behind the suit premises and not on the suit premises. She submitted that application requires consideration. In support of her submissions, she relied upon the following decisions:

- a. ***Alisaheb Abdul Latif Mulla Vs. Abdul Kalim Abdul Rahman Mulla and others*, AIR 1981 Bom. 253;**
- b. ***Ramchandra Dattatraya Gandhi Vs. Pushpabai Manohar Sheth*, AIR 1990 Bom. 182;**
- c. ***M/s. Hotel Rosalia Pvt. Ltd. Vs. M/s. Metro Hotel and others*, 2001 (2) Mh.L.J. 881; and**
- d. ***Suka Ishram Chaudhary Vs. Ranchhoddas Manakchand Shet Gujarathi*, (1942) 44 Bom.LR. 220.**

4. On the other hand, Dr. Hatle and Ms Godse supported the impugned orders. They have taken me through the cross-examination of the defendant. They submitted that defendant admitted that originally

the suit premises admeasuring 7.5' x 15' ft. was let out to him. Defendant has altered the area of the suit premises and now it is 9' x 25' ft. In the cross-examination, defendant admitted that the on the suit premises, he has constructed one storey (*potmala*). *Potmala* was constructed in the year 1994-95. As the defendant has increased demised premises from 7.5' x 15' to 9' x 25', the Courts below were justified in passing eviction decree under Section 13(1)(b) of the Act. They submitted that no case is made out for interfering with the impugned orders.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. In so far as ground under Section 13(1)(b) is concerned, the learned trial Judge has considered this ground from paragraphs 8 to 17. The learned trial Judge referred to certified copy of the plaint in Regular Civil Suit No.551/83 at exhibit-35, which was filed by the original defendant herein against the original plaintiff. The copy of the plaint mentioned that the area in possession of the defendant is 7.5' x 15' ft. Thus, defendant admitted that original plaintiff had let out property admeasuring 7.5' x 15' ft. In paragraph 9, the learned trial Judge noted that from the evidence of D.W.1, it appears that actual measurement of the suit premises is 14.9' x 8.7' ft. He admitted that he had made alteration and addition in the suit property by way of permanent construction of wall and roof and that it was done by him with the consent of the plaintiff. The learned trial Judge also observed that from the evidence of D.W.1, it is evident that D.W.1 had not taken any written permission from the plaintiff. After considering the material on record, the learned trial Judge decreed the Suit under Section 13(1)(b) of the Act.

6. In so far as the District Court judgment is concerned, the ground

under Section 13(1)(b) is considered from paragraphs 8 to 17. In paragraph 8, it was noted that if the defendant has admitted that he has made construction in the open space behind suit property admeasuring 10' x 7' ft. and that he is in possession of total area admeasuring 9' x 25' ft., onus is on him to prove that he has made such permanent construction with the consent of the plaintiff-landlady. In paragraph 12, the learned District Judge noted that as per the defendant's contention he has raised additional construction in the year 1991 with consent of the landlady. Prior to instituting the present Suit, landlady had issued notice dated 22.02.1997 calling upon the defendant to vacate the premises as he had made permanent construction without her consent. Though, defendant replied that notice on 28.02.1997, he did not come with the case that the alleged construction was made in the year 1991 with the written consent of the landlady. On the other hand, he denied raising of additional construction.

7. Ms Khandge submitted that defendant has not made additions and alterations on the premises. The learned District Judge has also considered this submission from paragraph 15 and ultimately held that defendant has carried out additions and alterations and is liable to be evicted on the ground of Section 13(1)(b) of the Act. With the assistance of the learned Counsel for the parties, I have also perused the cross-examination of the defendant. He further admitted that in the year 1992-93, he had made additional construction in the suit premises and for that he did not obtain written permission. Defendant admitted that he has constructed *Potmala* on the suit premises in the year 1994-95 and that, at that time, he did not obtain written permission of the plaintiff.

8. Ms Khandge relied upon the decision of **Alisaheb Abdul Latif Mulla** (*supra*). In paragraph 19, the learned Single Judge (Coram : R. D. Tulpule, J.) observed that in the very nature of things, no two cases will

provide identical facts and the question as to whether a particular construction or work is a permanent structure or otherwise, will have to be determined with reference to the facts found in each of such cases. She also relied upon the decision in **Ramchandra Dattatraya Gandhi** (*supra*) to contend that landlady did not object to the additions and alterations made by the defendant in the year 1991. The learned District Judge has already made reference to the fact that in reply dated 28.02.1997 given by the defendant to the notice dated 22.02.1997, defendant did not come with the case that the alleged construction was made in the year 1991. I, therefore, do not find that these decisions advance the case of the defendants.

9. Ms Khandge relied upon the decision in **M/s. Hotel Rosalia Pvt. Ltd.** (*supra*) to contend that if the additions and alterations are made for beneficial enjoyment of the suit premises, the decree under Section 13(1)(b) of the Act cannot be passed. I do not find merit in this submission. The Courts below, after appreciating the evidence on record have concurrently found that without written permission of the landlady, defendants have carried out additions and alterations. Finally, she relied upon **Suka Ishram Chaudhary** (*supra*) to contend that plaintiffs have to establish that additions and alterations are of permanent nature. I do not find any merit in this submission as well. After appreciating the evidence on record, the Courts below have concluded that the defendant has carried out additions and alterations of permanent nature without written permission of the landlady. The said findings are based upon the appreciation of evidence on record. Defendants were not in a position to demonstrate that the findings recorded by the Courts below are perverse, being based upon no evidence or that they are contrary to the evidence on record. Defendants were also not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the Courts below. Merely because on the evidence on record,

another view is possible, that itself is no ground for invocation of powers under Section 115 of the C.P.C. Hence, Application fails and the same is dismissed.

10. In view thereof, Civil Application No.55 of 2017 for extension of time does not survive and the same is disposed of accordingly.

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by Minal Sandip
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(R. G. KETKAR, J.)

Minal Parab