

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL REVISION APPLICATION NO.648 OF 2017**

Sharad Madhav Mohite	]	Applicant
Vs.		
Maniklal Radhakishan Mantri	]	
(since deceased through heirs and	]	
and legal representatives)	]	
1. Mohini Maniklal Mantri & Ors.	]	Respondents

.....
Mr. Ravindra S. Pachundkar, for Petitioner.
.....

CORAM : R.G. KETKAR, J.

DATE : 14TH MARCH, 2018.

P.C.

Heard Mr. Panchundkar, learned Counsel for the applicants at length.

2. By this Civil Revision Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C') the applicant, hereinafter referred to as 'defendant No.1' has challenged the judgment and decree dated 1st December, 2016 passed by 6th Additional Judge, Small Causes Court Pune in Civil Suit No.658 of 1998 as also the judgment and decree dated 12th September, 2017 passed by the learned District Judge-11 Pune in Civil Appeal No.59 of 2007. By these orders, the Courts below decreed the suit instituted by respondents No.1 and 2, hereinafter referred to as plaintiffs under Section 12, 13(1) (b), 13 (1) (e) and 13 (1) (g) of the Bombay Rents Hotel and Lodging

House Rates Control Act, 1947 (for short 'Act') and directed the defendants to hand over vacant and peaceful possession of Shop admeasuring 500 square feet situate on the ground floor of the House No.189, Ghorpadigaon, Pune, more particularly described in paragraph 1 of the plaint within two months from the date of the order.

3. In view of section 7 of the C.P.C, provisions of section 115 are not applicable to the proceedings arising out of Provincial Small Causes Courts Act 1887, leave to convert Civil Revision Application in Writ Petition is granted. Amendment shall be carried out within one week from today.

4. In support of this Petition, Mr. Pachundkar submitted that defendant No.1 is not a tenant of the suit premises. Defendant No.1 is a trespasser. He submitted that during pendency of the appeal defendant No.1 took out application for amendment of written statement under Order-VI, Rule-17 of the C.P.C. By order dated 4th October, 2016, learned District Judge rejected the application. Defendant No.1 took out application at Exhibit 81 under Order-41, Rule-27 of the C.P.C for producing additional evidence. The learned District Judge rejected the application on 4th October, 2016. Defendant No.1 taken out application Exhibit 87 for production of additional evidence, it was rejected on 28th July, 2017. Defendant No.1, thereafter took out application Exhibit 90 for production of additional evidence which was rejected on 28th July, 2017. He submitted that the learned District Judge was not justified in rejecting the application for amendment of written statement as also applications made under Order-41, Rule-27 for production of additional evidence. In view of section 105(1) of C.P.C, defendant No.1 can challenge these orders in the present proceedings. He, therefore, submitted that the applications may be allowed and matter may be remitted either to the trial Court or District Court.

5. Mr. Pachundkar further submitted that original tenant was Madhav Mohite. After his death, his wife Malti Madhav Mohite was accepted as tenant. She has instituted Regular Suit No.40 of 2015 in the Small Causes Court Pune, inter alia, praying for declaration that the decree passed in Civil Suit No.658 of 1998 (in the present suit) is not binding on her and for perpetual injunction restraining the plaintiffs herein from taking possession from her. During pendency of that suit, Malti died leaving behind wife of defendant No.1 who is the present tenant in the suit premises. He, therefore, submitted that either the matter may be remitted to the trial Court or District Court. In any case, Petition requires consideration.

6. I have considered the submissions of Mr. Pachundkar. I have also perused the material on record. The learned trial Judge had decreed the suit under Section 13 (1) (b), 13 (1) (e) and 13 (1) (g) of the Act. The learned trial Judge declined to pass decree on the ground of default under as contemplated by section 12. In so far as the impugned order of the learned District Judge is concerned, the learned District Judge held that defendant No.1 is a defaulter. In spite of demand of rent as contemplated by section 12 of the Act, the defendant has not deposited the rent. Defendant No.1 carried out additions and alterations in the suit premises without written consent of the landlord. Defendant No.1 has unauthorizedly sublet part of the suit premises to defendants No.2 and 3 with a view to profiteering. The learned District Judge held that the plaintiffs have established that the suit premises require reasonably and bona fide for their own use and occupation and greater hardship will be caused to the plaintiffs if eviction decree is not passed.

7. In paragraph 13, the learned District Judge noted the submission of defendant No.1 that as per the pleadings of the plaintiff in paragraph 4 of the plaint, the defendant is a trespasser in respect of the suit premises. There is

no relationship of landlord and tenant between the plaintiffs and defendant No.1. The Small Causes Court had no jurisdiction to try and entertain the suit. The learned District Judge considered this aspect in paragraph 16 and observed that in order to ascertain jurisdiction, the plaint has to be read in entirety and not the averments made in the written statement. After considering the assertions made in paragraph 4 of the plaint, the learned District Judge observed that the plaintiff contended that defendant No.1 is in arrears of rent from July, 1989. In paragraph 8, the plaintiff asserted that he had sent notice to defendant No.1 to 3 in the month of November, 1997 terminating the tenancy. In other words, the learned District Judge held that a perusal of the plaint in its entirety shows that the plaintiff treated defendant No.1 as tenant in respect of the suit premises and invoked the ground of eviction under the Act. The learned District Judge after considering the material on record observed that without written consent of the landlord, defendant No.1 constructed underground water tank and increased height of the walls of the suit premises. He has carried out additions and alterations of permanent nature in the suit premises. In the written statement, the defendant did not specifically deny construction of water tank and increasing height of walls. As the construction carried out by the defendant is of the permanent nature and it is not a tenantable repairs, the learned District Judge held that the trial Court was justified in passing decree under Section 13 (1) (b).

8. In so far as ground of unlawful subletting is concerned, the learned District Judge has considered this aspect from paragraph 30 onwards. It was observed that once it was established by the landlord that the tenant has parted with possession of the suit premises or part of the suit premises, onus is upon the tenant to prove that he has neither parted with possession nor profiteering from such parting with possession. No evidence is adduced. In paragraph 31, the learned District Judge recorded that the plaintiff has proved

that defendant No.1 has unauthorizedly sublet part of the suit premises to defendants No.2 and 3.

9. As far as ground of bona fide requirement is concerned, this aspect is considered in paragraphs 32 to 35. After considering the material on record, the learned District Judge held in paragraph 36 that the plaintiff has proved that he requires the suit premises for his own use and occupation. In paragraph 37, the learned District Judge considered the aspect of hardship and answered in favour of the plaintiff.

10. Thus, the Courts below after appreciating the evidence on record concurrently decreed the suit under Section 13 (1) (b), 13 (1) (e) and 13 (1) (g) of the Act. Though the trial Court declined to pass decree under Section 12, the learned District Judge has passed the decree on that ground as well. That discussion is found in paragraphs 19 to 21. In paragraph 20, the learned District Judge considered the evidence of Sharad Mohite D.W.1 at Exhibit 81. In the cross-examination, he admitted that after receipt of the demand notice, he did not offer arrears of rent to the landlord nor he filed application for fixation of standard rent. He also admitted that till date, he has not deposited amount of arrears of rent in the Court. The learned District Judge, therefore, held that the plaintiff has established that after service of demand notice, the defendant has not complied with requisitions, which shows that he is not ready and willing to pay arrears. Hence, no case is made out for invoking powers under Section 115 of the C.P.C and as such is dismissed.

11. After considering the material on record, I do not find that the Courts below committed any error in decreeing the suit. The defendants are not in a position to demonstrate that the findings recorded by the Courts below are perverse being based on no evidence or that they are contrary to the

evidence on record. The defendants are not in a position to demonstrate that on the basis of the evidence on record, no reasonable or prudent person would have reached conclusions arrived at by the Courts below. No case is made out for invocation of powers under section 115 of the C.P.C. Hence, Civil Revision Application fails and the same is dismissed.

[R.G. KETKAR, J.]