

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
REVIEW PETITION [STAMP] NO.36089 OF 2018
IN
CIVIL REVISION APPLICATION NO.406 OF 2018**

M/s. Jayantilal Investments	]	Petitioner
Vs.		
Purshottam Devji Patel & Anr.	]	Respondents

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Mr. D.S. Sabnis i/b LEX FIRMUS, for Petitioner.

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CORAM : R.G. KETKAR, J.

DATE : 19th DECEMBER, 2018.

P.C.

Not on board. At the request of Mr. Sabnis, taken up in the production board.

2. Heard Mr. Sabnis, learned Counsel for the petitioner.
3. At the request of Mr. Sabnis, Review Petition is taken up for admission.
4. By this Petition under section 114 r/w Order-XLVII, Rule-1 of the Code of Civil Procedure, 1908 (for short 'C.P.C'), the petitioner has sought review of the order dated 9th October, 2018 passed by this Court in Civil Revision Application No.406 of 2018. By that order, the Civil Revision Application preferred by the applicant/plaintiff challenging 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, was dismissed.

5. In support of this Petition, Mr. Sabnis strenuously contended that the order under review suffers from error apparent on the face of the record. He invited my attention to the notice dated 24th February, 1997 addressed by Advocate Nalin B. Parekh on behalf of the Parshottam Patel and Pankaj Patel and in particular paragraph 2 thereof. In paragraph 2, Parshottam Patel and Pankaj Patel stated that they are owners in respect of the structures situate upon Plot No.143/8 within their own rights. He submitted that they admitted that they are owners in respect of the structures situate on the said plot and thus, they are tenants only in respect of open land. While dismissing the Civil Revision Application, this Court held that the defendants are tenants in respect of open land together with the structure. Thus, there is clearcut error apparent on the face of the record.

6. Mr. Sabnis further submitted that by Conveyance Deed dated 18th July, 1988, the petitioners have purchased the property. Along with this Conveyance Deed, list of tenants is annexed. Name of the respondents appear at Sr. No.22 and it is only in respect of land. Hence, order under review suffers from apparent error on the face of the record. Therefore, order under review deserves to be recalled.

7. I have considered submissions advanced by Mr. Sabnis. I have also perused the material on record. A perusal of the order under review shows that contention of the petitioners that the plaintiffs had let out open piece of land, more particularly, described in paragraph 6 of the plaint and that the suit premises is open piece of land as also the provisions of the Maharashtra Rent Control Act, 1999 are not applicable was noted. Reference was made to the assertions made in paragraphs 6 and 24 of the plaint and it was observed in paragraph 11 of the order that 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. A reference was made to agreement of lease dated 1st January, 1975 and in particular clause-1 thereof which *prima facie* supported the contention of the defendants that open land together with construction comprising of three rooms was let out to the defendants.

8. Mr. Sabnis relied on paragraph 2 of the notice dated 24th February, 1997 to contend that the defendants admitted that they are owners in respect of the structures situate upon the said plot and thus, they are tenants only in respect of open land. He submitted that the said contention was agitated at the time of hearing of the Civil Revision Application. It was, however, not dealt with by this Court. A perusal of paragraph 1 of that notice shows that the defendants contended that they are tenants in respect of a plot No.143/B (Part) admeasuring 669 square meters i.e 800 square yards along with structures situate therein at Mantri Wadi, S.V. Road, Malad (W), Mumbai 400 064 at the monthly rent of Rs. 300/- inclusive of the permitted increases. The defendants contended that the plaintiffs are the Landlord and/or owner of the said plot of land. In view thereof, I do not find any merit in the submission of Mr. Sabnis that the defendants are tenants only in respect of open land and not in respect of open land with structures.

9. While disposing of Civil Revision Application, it was observed that there was serious controversy between the parties as regards the premises that was let out to the defendants. The learned trial Judge in paragraph 7 of the order observed that 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, therefore, entire evidence of the plaintiffs remained unchallenged.

9. As mentioned earlier, the Appellate Court remitted the matter to the trial Court with a direction to give full opportunity to both the parties to adduce evidence. In view thereof, no case is made out for reviewing the order under review. Hence, the Petition fails and the same is dismissed.

[R.G. KETKAR, J.]