

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 113 OF 2019

Devendrakumar Takhatmalji Kothari

...Applicant

Versus

Kanifnath Dnyanoba Kamathe

...Respondent

With

Civil Revision Application NO. 114 OF 2019

With

Civil Revision Application NO. 115 OF 2019

....

Mr. Rahul Kate, Advocate for the Applicant in all CRAs.

Ms. Sapna Krishnappa, Advocate for the Respondents in all CRAs.

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CORAM : R. G. KETKAR, J.

DATE : 06th MARCH, 2019

P.C.

1. Heard Mr. Rahul Kate, learned counsel for the applicant and Ms. Sapna Krishnappa, learned counsel for the respondents, in all Civil Revision Applications, at length.

2. By these applications under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicant/defendant has challenged the orders dated 20.12.2018 passed by the learned Joint Civil Judge, Junior Division, Saswad in applications filed by the defendant under Order VII Rule 11(a) & (d) of C.P.C.

3. In support of these applications, Mr. Kate has invited my attention to the application filed by the defendant under Order VII Rule

11(a) & (d) of C.P.C. He submitted that the plaint is liable to be rejected on the ground that it does not disclose the cause of action. That apart, in R.C.S. No.310/2011 filed by the applicant against the respondent, the respondent contended that by efflux of time the tenancy of the applicant herein is terminated w.e.f. 31.7.2011. The applicant herein is illegally holding property at sufferance and is not entitled to claim any tenancy rights any more in the property. Mr. Kate, therefore, submitted that on the plaintiff's own showing, the applicant/defendant is occupying the suit premises as a trespasser and, therefore, the plaint is liable to be rejected under Order VII Rule 11(d) of C.P.C.

4. On the other hand, Ms. Krishnappa supported the impugned orders and submitted that while considering the application under Order VII Rule 11 of C.P.C., the Court has to consider the averments made in the plaint and not defence set up by the defendant. She, therefore, 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. As mentioned earlier, the defendant has filed application under Order VII Rule 11 (a) and (d) of C.P.C. for rejection of the plaint. With the assistance of the learned Counsel appearing for the parties, I have perused the copy of the plaint filed by the plaintiff in each

suit. In the plaint, the plaintiff has asserted that the suit premises was given for a period of eleven months on leave and licence basis. The last agreement was from 1.9.2010 to 31.7.2011. The licence has come to an end on 31.7.2011. Thus, a perusal of the plaint shows that the plaintiff has instituted the suit on the ground that the licence has come to an end by efflux of time. It is settled principle of law that while considering application under Order VII Rule 11 of C.P.C., the Court has to consider the averments made in the plaint only and has to proceed on the premise that the assertions made in the plaint are true and correct and not defence set up by the defendant. In view thereof, I do not find that the learned trial Judge has committed any error while rejecting the applications. Hence, Civil Revision Applications fail and the same are dismissed. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)