

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION NO.8 OF 2017

IN

CIVIL REVISION APPLICATION NO.884 OF 2013

Pushpa Tulsi Dhobi @ Rajak	...	Petitioner
Vs.		
Gulabchand Shivilal Ashiwal (decd) through		
Angooribai Gulabchand Ashiwal and others	...	Respondents

Ms Vandana Santara for Petitioner.
Mr. Kunal Bhanage for Respondents.

CORAM : R. G. KETKAR, J.
DATE : JUNE 11, 2019

P.C. :

Heard Ms Santara, learned Counsel appointed through legal aid for the petitioner and Mr.Bhanage, learned Counsel for the respondents at length.

2. By this Petition under Section 114 read with Order XLVII, Rule 1 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), the petitioner has sought review of order dated 21.01.2014 passed by this Court in C.R.A.No.884 of 2013. By that order, C.R.A. preferred by the petitioner herein challenging the judgment and decree dated 12.11.2008 passed by the learned trial Judge in R.A.E.Suit No.516 of 2002 as also the judgment and decree dated 13.08.2013 passed by the Appellate Bench of the Small Causes Court in Appeal No.43 of 2009 was dismissed. By these orders, the Courts below decreed the Suit instituted by the respondents on the grounds of - i) unlawful subletting, ii) non-user, iii) bonafide requirement, iv) additions and alterations of permanent nature without written consent of the landlord and v) default as contemplated

under the Maharashtra Rent Control Act, 1999 (for short 'Act'). Aggrieved by the order dated 21.01.2014 passed by this Court, petitioner preferred Special Leave Petition before the Apex Court. By order dated 16.04.2014, S.L.P. was dismissed. The petitioner was given time upto 31.12.2014 for vacating the premises subject to filing usual undertaking among other conditions. It is common ground between the parties that on 26.03.2015, respondents have received possession of the suit premises.

3. In support of this Petition, Ms Santara has invited my attention to the following documents received under the Right to Information Act, 2005:

- i) Communication dated 26.05.2017 addressed by the Information Officer / Naib Tahsildar (Land), Mumbai Suburban District to the petitioner setting out therein that C.T.S.No.565 belongs to the State Government;
- ii) Communication dated 22.05.2017 addressed by the Information Officer / Naib Tahsildar (Land), Mumbai Suburban District to the petitioner informing her that no lease rent is received in respect of C.T.S.No.565;
- iii) Communication dated 24.05.2017 addressed by the Information Officer / Head Clerk, City Survey Office, Bandra to the petitioner informing her that names of Solal Harbhagat and Shivlal Haribaksh are not recorded in respect of C.T.S.No.565;
- iv) Communication dated 22.06.2017 addressed by the Collector, Mumbai Suburban District to the City Survey Officer, Bandra setting out therein that Ward No.51 from C.T.S.No.565 is given to Shri Shivlal Harbhagat on 13.03.1953 subject to terms and conditions. However, while allotting the plots, no lease deed was executed.

- v) Communication dated 10.12.2018 addressed by the Information Officer / Head Clerk, City Survey Office, Bandra to the petitioner informing her that excepting C.T.S.No.564 and 565, names of Dudaki Shivilal, Totaram Shivilal, Gulabchand Shivilal, Chetram Shivilal, Soni Ganpat are not recorded in respect of other properties.
- vi) Order dated 01.01.2019 passed by the Collector, Mumbai Suburban in proceedings filed by the petitioner against Talaram Shivilal Ashiwal, Gulabchand Shivilal Ashiwal and six others.

4. She submitted that these documents were made available to the petitioner only after this Court dismissed the C.R.A. and the Apex Court dismissed the S.L.P. Because of lack of awareness, petitioner could not produce these documents in the proceedings instituted by the respondents. She submitted that the documents received by the petitioner under the Right to Information Act, 2005 clearly establish that respondents / plaintiffs had no locus to maintain the Suit for eviction against the petitioners. There is no relationship of landlord and tenant between the parties. The alleged rent receipt produced by the plaintiff is a forged and fabricated document. She, therefore, submitted that order dated 21.01.2014 passed by this Court in C.R.A. deserves to be set aside.

5. On the other hand, Mr. Bhanage submitted that no case is made out for review of order dated 21.01.2014 passed by this Court. He submitted that the contention that there is no relationship of landlord and tenant between the parties was specifically urged before this Court and the same was turned down. He submitted that the petitioner is trying to reopen the case, which is concluded and in fact, the decree is also

executed. He, therefore, submitted that Petition deserves to be dismissed.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. The documents received by the petitioner under the Right to Information Act, 2005 do not even remotely suggest that the suit premises does not belong to the respondents. While dismissing the C.R.A., the contention raised on behalf of the petitioner that the plaintiffs have no locus to maintain the Suit as plaintiffs are neither landlord nor owners was specifically urged. Even the contention that there is no relationship of landlord and tenant between the parties was also urged. The submission that plot No.51 belongs to the State Government was also noted. In paragraph 7, it was noted that after the death of defendant No.1, his wife-defendant No.1A though had chance of denying the relationship between the defendant No.1 and the plaintiff, she did not challenge the relationship before the trial Court. The trial Court, after considering the evidence on record, held that defendant No.1 is tenant of the suit premises and was inducted by the plaintiffs' father. The relationship of landlord and tenant is established, and therefore, the Small Causes Court has jurisdiction to entertain and try the Suit.

7. Ms Santara submitted that the rent receipt produced by the plaintiffs is forged and fabricated document. It is not possible to accept this contention for more than one reason. In the first place, no such contention was raised before the Courts below. Secondly, while considering the application for review, the disputed questions of fact requiring parties to adduce evidence cannot be gone into.

8. In the case of ***Kamlesh Verma Vs. Mayawati***, AIR 2013 SC

3301, the Apex Court has considered the scope of review and has observed thus,

“The jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. The power of review can be exercised for correction of a mistake but not to substitute a view. The mere possibility of two views on the subject is not a ground for review. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII, Rule 1 of C.P.C. ”

9. Applying the tests laid down by the Apex Court to the facts of the present case, no ground is made out for review of the order dated 21.01.2014. Review Petition fails and the same is dismissed. Before parting, the Court places on record appreciation of assistance rendered by Ms Santara, who was appointed through Legal Aid.

(R. G. KETKAR, J.)

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