

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.255 OF 2019

Praful Vithaldas Vithlani ... Applicant
Vs.
Ravishankar Gagubhai Charitable Trust & others ... Respondents

Mr. Omprakash Pandey i/b. M/s. Pandey & Co. for Applicant.
Mr. Prashant P. More for Respondent No.2.
Mr. H. S. Sonkar for Respondents No.4 to 7.

CORAM : R. G. KETKAR, J.
DATE : JUNE 13, 2019

P.C. :

Heard Mr. Pandey, learned Counsel for the applicant, Mr. More, learned Counsel for the respondent No.2 and Mr. Sonkar, learned Counsel for the respondents No.4 to 7 at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicant, hereinafter referred to as 'plaintiff', has challenged the judgment and order dated 14.07.2015 passed by the learned Judge of the Court of Small Causes at Mumbai below exhibit-46 in R.A.D.Suit No.858 of 2012 as also the judgment and order dated 22.11.2017 passed by the Appellate Bench of the Small Causes Court at Mumbai in Miscellaneous Appeal No.73 of 2016. By these orders, the Courts below allowed the application exhibit-46 filed by the defendants No.4 to 7 under Order VII, Rule 11 of C.P.C. for rejection of the plaint. The Courts below have held that Chunilal Dave had instituted Suit being L.E.&C.Suit No.40/50 of 2000 in the Small Causes Court at Bandra against the applicant-plaintiff for recovery of possession on the ground that plaintiff is a licensee in respect of room No.8 situate at building No.6, A Wing, ground floor, Trivedi Nivas, New

Nagardas Road, Andheri (East), Mumbai 400 069. The plaintiff contended that he is a tenant and not licensee. The learned trial Judge held that plaintiff in that case established that applicant herein is a licensee. The learned trial Judge further held that applicant failed to prove that he is a deemed tenant in the suit premises.

3. Aggrieved by this decision, applicant preferred appeal No.26 of 2009, which was dismissed. Aggrieved by these orders, applicant instituted C.R.A.No.478 of 2011 in this Court. C.R.A. was dismissed as not pressed on 20.01.2012. The applicant thereafter filed Review Petition No.15 of 2012. By order dated 17.08.2012, Review Petition was dismissed. Aggrieved by these orders, applicant preferred S.L.P. before the Apex Court, which was dismissed on 12.10.2012. The decree passed in L.E.&C.Suit was executed on 28.08.2012. The applicant thereafter has instituted present Suit for declaration of his tenancy rights and for recovery of possession of the suit premises. The Courts below, therefore, allowed the application filed by the defendants No.4 to 7 and dismissed the Suit.

4. Mr. Pandey submits that applicant is present in the Court. He has tendered photocopy of his Aadhar Card, which is taken on record and marked 'X' for identification. On instructions, he seeks permission to withdraw the application unconditionally. He further states that he has explained to the applicant the consequences of withdrawing the application unconditionally.

5. As against this, Mr. More submitted that this application is nothing but abuse of process of Court and abuse of process of law. The applicant is trying to reopen the issue which is already concluded in the earlier round of litigation and the decree is also executed in L.E.&C. Suit. He further submitted that applicant has instituted S.C.Suit No.275

of 2013 in the City Civil Court. Defendants No.4 to 7 took out Notice of Motion under Order VII, Rule 11 of C.P.C. for rejection of the plaint. By order dated 27.08.2018, the learned Judge of the City Civil Court allowed the Motion taken out by the defendants No.4 to 7 and dismissed the Suit instituted by the applicant herein.

6. I have considered the submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As mentioned earlier, the contention of the applicant that he is a tenant in respect of the suit premises was negated in the earlier round of litigation right upto the Apex Court. In view thereof, I do not find that the Courts below committed any error in passing the impugned orders. However, as Mr. Pandey has sought withdrawal of the Application unconditionally, I refrain from imposing exemplary costs on the applicant. Civil Revision Application stands dismissed as withdrawn.

(R. G. KETKAR, J.)