

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
REVIEW PETITION [STAMP] NO.9425 OF 2018
IN
CIVIL REVISION APPLICATION NO.632 OF 2015

Shivana L. Shetty (since deceased) through	]	
legal Heirs and representatives.	]	
Kalyani Shivanna Shetty and others.	]	Applicants
Vs.		
Prabhakar Laxman Narvekar	]	
(since deceased) through legal Heirs and	]	
representatives.	]	
Vijaya Prabhakar Narvekar and others.	]	Respondents

.....

Mr. R.S. Alange i/b Swati Gawde, Advocate for the Applicants.
Mr. Clifford Martis, Advocate for Respondents No.1 (a) and 1(b).

.....

CORAM : R.G. KETKAR, J.

DATE : 28th JUNE, 2019.

P.C.

Heard Mr. Alange, learned Counsel for the applicants and Mr. Martis, learned Counsel for respondents No.1 (a) and 1(b).

2. 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 petitioners have sought review of the order dated 9th February, 2016 passed by this Court in Civil Revision Application No.632 of 2015. That C.R.A was instituted by the petitioners herein challenging the judgment and decree dated 24th September, 2001 passed by the learned trial Judge in R.A.D Suit No.1831 of 1984 as also the judgment and decree dated 21st March, 2006 passed by the Appellate

Bench of the Small Causes Court in Appeal No.67 of 2002. By these orders, the Courts below had dismissed the suit instituted by the petitioner, hereinafter referred to as 'plaintiff' for declaration that he is tenant in respect of Hotel "Shiv Punjab". By order dated 9th February, 2016, this Court dismissed C.R.A. It is this order which is sought to be reviewed by way of this Petition.

3. In support of this Petition, Mr. Alange submitted that this Court committed several errors apparent on the face of the record while dismissing C.R.A. The Court failed to appreciate that the petitioner has become protected licensee in respect of the suit premises by virtue of amendment in section 15-A of the Bombay Rents, Hotel and Lodging House Rates Control Act (for short 'Act'). Mr. Alange submitted that agreement was executed between the parties on 28th April, 1958. The said agreement was followed by subsequent agreements dated 12th September, 1966, 1st May, 1968, 7th August, 1972, 2nd March, 1976 and 2nd March, 1982. Thus, prior to 1st February, 1973, the plaintiff was inducted in the suit premises. Relationship between the parties was that of licensor and licensee. As the plaintiff was in occupation of the suit premises as licensee on 1st February, 1973, the Courts below including this Court ought to have decreed the suit of the petitioner for declaration of his tenancy rights in respect of the suit premises.

4. Mr. Alange further submitted that while dismissing R.A.D. Suit No.1831 of 1984 on 24th September, 2001, the learned trial Judge held that it had no jurisdiction to entertain and try the suit. He submitted that once the trial Court recorded this finding, it ought to have dismissed the suit without giving findings on other issues.

5. Mr. Alange has taken me through the findings recorded by the learned trial Judge against Issue No.5 in paragraphs 33 and 34. In paragraph

34, the learned trial Judge in terms held that there is no relationship between the plaintiff Shri Shetty and Shri Narvekar/Wagh as a landlord and tenant. Therefore, R.A.D Suit No.1831 of 1984 as framed and filed under the Act is not maintainable.

6. On the other hand, Mr. Martis supported the order. He submitted that no case is made out for review of the order dated 9th February, 2016.

7. I have considered the rival submissions advance by learned Counsel for the parties. I have also perused the material on record. As mentioned earlier, the petitioner/plaintiff had instituted R.A.D Suit No.1831 of 1984 for declaration of his tenancy rights in the Small Causes Court. By order dated 24th September, 2001, the learned trial Judge dismissed the suit. It is no doubt true that while answering Issue No.5, the learned trial Judge held that the Small Causes Court has no jurisdiction to entertain and try the suit. This error was rectified by the Appellate Court while answering Point No.3. In paragraph 29, the Appellate Court noted that suit is filed by the plaintiff seeking declaration that he is lawful sub tenant or protected licensee in respect of the suit premises of which deceased Laxman Vishram Narvekar was the tenant. Such suit in Mumbai can be filed only before the Small Causes Court and any other Court in Mumbai does not have jurisdiction to entertain such a suit. Only because the defendants in the said suit challenged the relationship does not extinguish the jurisdiction of the Small Causes Court. Whether the plaintiff has succeeded in proving his suit claim is not the base for deciding the issue of jurisdiction. The Appellate Court, therefore, held that claim of the plaintiff is arising out of the provisions of the Act and the suit instituted under section 28 of the Act is within the jurisdiction of the Small Causes Court.

8. A perusal of the order dated 9th February, 2016 passed by this Court does not indicate that the contention that the trial Court having held that it has no jurisdiction ought not have recorded finding on other issues and that the Appellate Court wrongly coming to the conclusion that the Small Causes Court has jurisdiction to entertain and try the suit was raised in this Court. Even otherwise, for the reasons recorded in paragraph 29 by the Appellate Court while answering issue of jurisdiction of the Small Causes, I do not find any merit in this submission.

9. In so far as contention that as the plaintiff was inducted in the suit premises prior to 1st February, 1973 and that he became protected licensee is concerned, equally I do not find any merit in this submission. This Court has referred to suit instituted by the plaintiff in the City Civil Court based on the agreements referred hereinabove. Before the City Civil Court, the plaintiff specifically contended that he is conducting hotel business pursuant to the said agreements. Thus, before the City Civil Court, the plaintiff claimed injunction on the strength of the conducting agreements and, therefore, the plaintiff cannot contend before the Small Causes Court that these agreements were in fact camouflage for creation of sub tenancy. This Court has considered the contention of the plaintiff that he became protected licensee and repelled the said contention. In view thereof, I do not find any merit in this submission also.

10. 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. ”

11. Applying the tests laid down by the Apex Court to the facts of the present case, no case is made out for reviewing the order dated 9th February, 2016. Hence, Review Petition fails and the same is dismissed. Order accordingly.

[R.G. KETKAR, J.]