

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 280 OF 2018

Vidyadhar Govind Parchure (since Decd.) ...Applicants
Through LR's.

Versus

Dilip Keshav Nimkar ...Respondent

Abhijeet J. Kandarkar - Advocate for the applicants.
Harshad Inamdar – Advocate for the respondent

CORAM : DAMA SESHADRI NAIDU, J.

DATE : 8th JULY, 2019.

P.C. :

The applicant is the original tenant and the respondent is the landlord. The landlord filed Civil Suit No. 614 of 2004 for eviction against the original tenant. It was on the grounds of bona fide requirement, arrears of rent, waste and damage, nuisance, and denial of the landlord's title.

2. Pending trial, after filing the written statement the original tenant died. Though his son, the present applicant, was brought on record as the legal representative, he did not seem to have prosecuted the case. But because of the defence the original tenant already placed on the record, the trial Court decreed the suit on merits, through its judgment, dated 15th

December 2010.

3. Aggrieved, the applicant filed Appeal No. 380 of 2012 before the District Court, Thane. As the applicant was a person of unsound mind, his uncle brought himself on record as the next friend in the Appeal. Then the appellate Court set aside the judgment and remanded the matter to the trial Court, through its judgment dated 17.11.2014. Eventually, on merits, after allowing both the parties to lead evidences, the trial Court decreed the Suit on 05.04.2016.

4. Once again, the applicant filed Appeal No. 169 of 2016, which stood dismissed on 17.04.2018. Against the concurrent findings, the applicant filed this Civil Revision Application, under Section 115 of CPC.

5. On the face of it, a competent Civil Court tried the matter and, later, a District Court entertained the Appeal but dismissed it on merits. I fail to understand how a Civil Revision Application under Section 115 is maintainable against a decree by the regular Civil Court. It could have been a second appeal. Then, the applicant's counsel informed me that the trial Court has also been given the additional charge of a Rent Control Court. But the proceedings do not reflect that aspect. Besides that, there is a specific plea of denial of title and that could have disabled the Rent Control Court to adjudicate the *lis*. Yet curiously, there is no issue on that count.

6. At any rate, the appellate Court framed these points for its considerations:

1) Whether plaintiff proves that defendant is habitual defaulter in paying rent and he is in arrears of rent for period May 2004 till September 2004 total Rs. 996.70/-?

- Negative

2) Whether plaintiff proves that deceased defendant has caused nuisance to the plaintiff and neighbors of the suit premises?

- Affirmative

3) Whether plaintiff proves that suit premises is reasonably and bona fide required to him for occupation of his family?

- Affirmative

4) To whom greater hardship would cause if decree of eviction is not passed?

- To the respondent (original plaintiff)

5) Whether plaintiff is entitled to recover rent, taxes and other charges from the defendant as prayed?

- Negative

6) Whether plaintiff is entitled for possession of suit premises?

- Negative

7) Whether impugned judgment requires interference by this Court?

- Negative

8) What order and decree?

- As per final order

7. On points 1, 5 and 7, the appellate Court has held in the applicant's favour, but on the rest of the points, it has held in the

landlord's favour. As a result, the applicant suffered concurrent findings.

8. Both the learned counsel have advanced their arguments extensively. As I was about to dictate the judgment, the applicant's counsel sought instructions from the applicant's next friend present in the Court. Then, he requested the Court to permit the applicant to continue in the leased premises for one more year from today. Thereafter, he would vacate and handover the vacant possession to the landlord. The respondent's counsel, however, protested and submitted that one year is too long a period to be granted. According to him, it should be lesser.

9. Indeed, though the applicant is said to be suffering from unsound mind, the Court has tried the original cause in the suit as was available to the applicant's father, the original tenant. So he could advance only the pleas available to the original tenant.

10. At any rate, the applicant himself, through his next friend, gives up his claim on the merits, if any, and seeks one year's time to vacate. Given the applicant's disability, I reckon one year could be granted, but it should be given based on the applicant's undertaking that he would vacate by the end of one year from today.

11. To my query on this count, the learned advocate spoke to the applicant's next friend and told me that this Court may record this arrangement as the applicant's undertaking through

the next friend.

12. Under these circumstances, without advertng to the merits, I dispose of the Civil Revision Application, recording the applicant's undertaking expressed through his next friend that he vacate the suit property in one year from today and handover the vacant possession to the landlord. Thus, I dispose of the Civil Revision Application No. 280 of 2018.

13. The tenant will continue to pay the rent @ Rs. 4,000/- per month as was paid earlier. Up to now, the applicant, it seems, has been depositing the rent before this Court. Whatever amount has accumulated so far, the respondent-landlord can withdraw it. From now onwards, the applicant will pay the rent directly to the respondent. If the applicant commits any fresh default in paying the rent before one year expires, the respondent may approach this Court and file an application, in which event this Civil Revision Application will stand revised for further consideration.

The Civil Revision Application stands disposed of.

[DAMA SESHADRI NAIDU, J.]