

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

CIVIL REVISION APPLICATION NO. 867 OF 2012

- | | | | |
|----|--|---|---------------|
| 1. | Smt. Sunanda Ramkrishna Ayare |) | |
| | residing at Room No. 2, Chawl No. 62-A |) | |
| | Rukmini Parab Chawl, Near Muktadevi |) | |
| | Temple, Hill Road, Chunabhatti, Sion (East) |) | |
| | Mumbai - 400022 |) | |
| 2. | Santosh Ramkrishna Ayare |) | |
| | Residing at 2/203, Shri Vilas Kunj Hsg. Soc, |) | |
| | Kharegaon, Kalwa, Dist. Thane |) | |
| 3. | Vijay Rajaram Ayare |) | |
| | Residing at Room No. 5, Shiv Garajan |) | |
| | Chawl, Chunabhatti, Sion (East) |) | |
| | Mumbai - 400022 |) | ...Applicants |

VERSUS

- | | | | |
|------|--|---|--|
| 1. | Harishchandra Gopal Parab |) | |
| | Since deceased through his heirs & legal |) | |
| | representatives |) | |
| 1(a) | Shri Deepak Harishchandra Parab |) | |
| 1(b) | Shri Santosh Harishchandra Parab |) | |
| 1(c) | Shri Vijay Harishchandra Parab |) | |
| | All residing at Room No. 62, T. Rukhmini |) | |
| | Niwas, Near Mukta Devi Mandir, |) | |
| | Chunabhatti, Sion (East), Mumbai-400022 |) | |
| 2. | Smt. Bhamini Satish Parab |) | |
| 3. | Hemant Satish Parab |) | |
| 4. | Rajesh Satish Parab |) | |

5. Mrs. Kumudini Kishor Khanolkar)
 All residing at Rukmini Parab Niwas)
 Near Muktadevi Temple, Hill Road,)
 Chunabatti, Sion (East), Mumbai-400022)Respondents

Mr. Rajendra D. Parab for the Applicants.

Ms. Pratibha Shelke i/b P. J. Thorat for the Respondent Nos. 1 to 5.

CORAM : DAMA SESHADRI NAIDU, J.
DATED : 27th August 2019

JUDGMENT

Facts:

There are three applicants; they are the tenants. There are five respondents; they are the landlords. The landlords filed R.A.E. Suit No. 859 of 2002 for eviction, on these grounds: (i) arrears of rent (ii) sub-letting (iii) additions and alternations, and (iv) availability of alternative accommodation. But when the suit went for trial, the landlords gave up the last two grounds and proceeded with the first two grounds—that is, arrears of rent and subletting. The third applicant-defendant is said to be the sub-lessee.

2. On 26th February 2010, the trial Court decreed the suit on merits. Aggrieved, all the defendants filed Appeal No. 199 of 2010 before the Appellant Bench of the Small Cause Court, Bombay. But it dismissed the appeal on 05th September 2012. Further aggrieved, the applicants have filed this Civil Revision Application.

Submissions:**Applicants:**

3. Shri Parab, the learned counsel for the applicants-tenants, has submitted that the husband of the first applicant and father of the second applicant was the original tenant. He died on 28th September 2000. Though the statutory notice was issued in July 1999, by the time the landlords initiated the eviction proceedings in April 2002, the original tenant died. Therefore, the landlords, according to Shri Parab, ought to have issued a fresh statutory notice to the original tenant's legal representatives. In other words, notice issued to a dead tenant would not bind his legal representatives who were sought to be evicted.

4. On the second issue, that is sub-letting, Shri Parab contends that the third applicant is none other than the deceased original tenant's nephew, being his younger brother's son. As the third applicant's parents died young, he had been under the care and protection of the original tenant, that is his paternal uncle. Even after his uncle's death, the nephew continued to be with his uncle's family: applicant nos. 1 and 2.

5. In this context, Shri Parab has also pointed out that even the ration card of the deceased tenant's family reflects the third applicant's name. Despite all the evidence the applicants have placed on record, both the Courts below have ignored that evidence and concluded contrary to the facts about subletting.

6. Then, on the third issue, that is permission under section 22 of the Maharashtra Slum Areas (Improvements, Clearance and Redevelopment) Act, 1971 ("1971 Act"), Shri Parab contends that the landlords secured permission from the Competent Authority against the original tenant, but they used that permission only after his death—that is, against his legal representative. Thus, Shri Parab asserts that the landlords ought to have secured fresh permission under Section 22 of the 1971 Act, against the original tenant's legal heirs, as was the case with the statutory notice.

7. Besides, Shri Parab has submitted that the Appellate Bench of the Small Cause Court has not considered the issue about the permission under Section 22 in its proper perspective. To emphasise, what Shri Parab calls, the Appellate Bench's omission in adjudication, he has drawn my attention to the trial Court's findings. According to him, the trial Court noted the fact that the

applicants have raised a specific issue about the lack of permission under section 22. But the Appellate Bench, he points out, has simply ignored the applicants' specific objection. So it has considered that issue of permission in an erroneous perspective. To support his contentions, Shri Parab has relied on *Laxmi Ram Pawar v. Sitabai Balu Dhotre*¹.

Respondents:

8. Ms. Pratibha, the learned counsel for the respondents-landlords, has contended that the Courts below have rendered concurrent findings and this Court may not interfere with them while exercising its revisional jurisdiction, specifically, under Section 115 of CPC. She has also submitted that on each issue framed, both the trial Court and the Appellate Bench have rendered clear, elaborate, and cogent findings, which cannot be assailed. At any rate, she has submitted that the findings of default in paying the rent and subletting are pure findings of fact. They do not call for any interference. Of the two grounds the landlords have proved for earning the decree of eviction, the positive findings on one issue would suffice, even if the other one

¹ AIR 2011 SC 450.

were to fail. Thus, she urges the Court to dismiss the CRA.

Reply:

9. In reply, Shri Parab has submitted that once this Court could render positive findings on the first issue—that is, improper permission under Section 22 of the Act vitiates the entire proceedings—the whole suit should fall to the ground. Then, the other issues render themselves inconsequential.

10. Heard Shri Rajendra Parab, the learned counsel for the applicants, and Ms Pratibha Shelke, the learned counsel for the respondents, besides perusing the record.

Issues:

I. Should the landlords have issued a fresh statutory notice under Section 15 of the MRC Act to the deceased tenant's legal heirs?

II. Have the applicants 1 & 2 or their predecessor sublet the leased property?

III. Has the permission under Section 22 of the 1971 Act the landlords secured suffered from any legal lapse?

Discussion:

Issue No.I:

Fresh Statutory Notice to the Legal Heirs of the Deceased Tenant:

11. Indeed, the facts are not in dispute. The landlords initially issued a notice to the original tenant. That original tenant, who is no more, was the first applicant's husband and the second applicant's father, besides being the third applicant's uncle. That notice of demand was issued on 28th July 1999. True, the original tenant died in September 2000, and the landlord initiated the eviction proceedings in April 2002. Evidently, those proceedings were initiated against the original tenant's legal representatives and the alleged sublessee.

12. Granted, Shri Parab has argued with much force about the lack of statutory notice to the 1st and 2nd applicants, but we should examine the statutory scheme. Section 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 and Section 15 of the Maharashtra Rent Control Act (MRC Act) are analogous. Section 15 of the MRC Act reads:

15. No ejectment ordinarily to be made if tenant pays or is ready and willing to pay standard rent and permitted increases.- (1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of this Act.

(2) No suit for recovery of possession shall be instituted by a landlord against the tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of ninety days next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in Section 106 of the Transfer of Property Act, 1882 (IV of 1882).

(3) No decree for eviction shall be passed by the court in any suit for recovery of possession on the ground of arrears of standard rent and permitted increase if, within a period of ninety days from the date of service of the summons of the suit, the tenant pays or tenders in court the standard rent and permitted increases then due together with simple interest on the amount of arrears at fifteen per cent per annum; and thereafter continues to pay or tenders in court regularly such standard rent and permitted increases till the suit is finally decided and also pays cost of the suit as directed by the court.

(4) Pending the disposal of any suit, the court may, out of any amount paid or tendered by the tenant, pay to the landlord such amount towards the payment of rent or permitted increases due to him as the court thinks fit.

13. Section 15 (2) mandates that if the tenant is not paying the standard rent or the permitted increase, the landlord can evict him. To evict, first he should issue a notice as provided in Section 106 of Transfer of Property Act. After serving the notice, the landlord can sue the tenant. Here, the landlords notified the original tenant under Section 15(2) of the MRC Act, read with Section 106 of TP Act.

14. Once the landlord files the suit, the tenant can pay or tender in court the standard rent and permitted increases then due, with simple interest, in ninety days after his receiving the suit summons. Of course, he should continue to pay in court regularly the standard rent and the permitted increases till the suit is decided. The tenant need not wait until the landlord sues. Nor should he wait until the suit summons is served. The ninety-day window to pay the rent is the last-gasp opportunity for the tenant to avoid eviction. And, in that sense, the landlord gets no fresh cause of action pending the suit on the tenant's not paying the rent in ninety days. It is just another step. Here, the original tenant received the notice and replied to it. But he did not comply, as the landlords assert, with the demand in the notice—paying rent. Instead, he contested the landlords' claim and replied to the notice. That gave the landlords the cause of action to proceed against the tenant.

15. Here, the landlords served the statutory notice, received a reply, and then sued. It is one continuous process. Incidentally, in the meanwhile, the tenant died. But with him, the cause of action, too, did not die. So the landlords sued the tenant's legal

representatives, who continued to occupy the leased property only being the original tenant's legal heirs.

16. So, I am afraid the applicants' contention that they should have been notified under Section 15 of the MRC Act afresh does not pass the judicial muster. There is no privity of contract between the landlords and the applicants 1 and 2. They only trace their right through their deceased ancestor, the original tenant. Then they take those rights with all the liabilities or burdens as well. As the legal heirs, they could press forward only the plea available to the deceased original tenant. In other words, they have simply stepped into the original tenant's shoes. Nothing more.

17. In that context, I reckon the notice issued to the original tenant binds his legal representatives. So long as they have no independent claim of tenancy viz-a-viz the landlords, their insistence on having a fresh notice to quit does not arise. I, therefore, hold that the law does not mandate that the legal representatives of the deceased tenant should be put to a fresh notice on the original tenant's death. To that extent, the concurrent findings of the Courts below cannot be interfered with.

Issue No.II:*Subletting:*

18. On the second issue of subletting, the Appellate Bench has considered much evidence. In paragraph 37 of the judgment, the Appellate Bench has noted that there is ample evidence to conclude that the applicants 1 and 2 have been living at a different place. Only the third applicant, the new and alleged sublessee, was found living in the leased property. The voters' list for the relevant period did establish that the applicants 1 and 2 were living at a different place. Besides that, when the original tenant died, the medical record showed that he was living at a different place—not in the tenanted property. Both the voters' list and the medical records establish that the original tenant and, later, applicants. 1 and 2 were found living in Vilas Kunj Society, which has nothing to do with the leased property.

19. That said, I must also note that the finding of subletting is essentially a finding of fact. And both the Courts below found that the applicants 1 and 2 and, before them, the original tenant were living at a different place. This finding, as a fact, needs no

interference.

Issue No.III:

Is there any defect in the permission under Section 22 of the 1971 Act the landlords secured?

20. Now, let us address the third issue: the alleged defect in the landlords' securing permission under Section 22 of the 1971 Act. The tenants have rightly contended that if there were an adverse finding on this question, the entire suit would fail; then the findings on the first two issues would be of no consequence. But I need to examine whether there is any defect in the landlords' securing permission from the Competent Authority under Section 22 of the 1971 Act. To illustrate on this point, I may first extract Section 22, which reads:

“22. Proceedings for eviction of occupiers or for issue of distress warrants not to be taken without permission of competent Authority:

(1) Notwithstanding anything contained in any other law for the time being in force, no person shall except with the previous permission in writing of the Competent Authority, -

(a) institute, after commencement of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, any suit or proceeding for obtaining any decree or order for the eviction of any occupier from any building or land [in a slum area or for recovery of any arrears of rent or compensation from any such occupier, or for both; or]

. . . .

(2) Every person desiring to obtain the permission referred to in sub-section (1) [or (1-A)] shall make an application in writing to the Competent Authority in such form and containing such particulars as may be prescribed.

(3) On receipt of such application, the Competent Authority, after giving an opportunity to the parties of being heard and after making such summary inquiry into the circumstances of the case as it thinks fit, shall, by order in writing, either grant or refuse to grant such permission.

(4) In granting or refusing to grant the permission under clause (a) or (b) of sub section (1) or clause (a) of sub-section (1-A) the Competent Authority shall take into account the following factors, namely:-

(a) whether alternative accommodation within the means of the occupier would be available to him, if he were evicted;

(b) whether the eviction is in the interest of improvement and clearance of the slum area;

(b-1) whether, having regard to the relevant circumstances of each case, the total-amount of arrears of rent or compensation and the period for which it is due and the capacity of the occupier to pay the same, the occupier is ready and willing to pay the whole of the amount of arrears of rent or compensation by reasonable installments within a stipulated time;]

(c) any other factors, if any, as may be prescribed.

. . .

(5) Where the Competent Authority refuses to grant the permission under any of the clauses of sub-section (1) or (1A), it shall record a brief statement of the reasons for such refusal, and furnish a copy thereof to applicant."

21. Whatever reasons we applied to Issue No. I—not issuing a

fresh quit-notice to the successor-tenants—will apply here, too. Besides that, the third applicant, whom the landlords called a sublessee, was a party to the proceedings under Section 22 before the Competent Authority. And he did contest the landlords' application. The landlords, to begin with, sought and secured permission against the original tenant and the third applicant. Before they could sue, the original tenant died. Then they sued the legal heirs and the third applicant, the sublessee. It was on the same permission the landlords got under Section 22 against the original tenant. I have already noted that there is no privity of contract between the applicants 1 and 2 on the one hand and landlords on the other. Then, as the applicants had traced their rights through the deceased original tenant, the proceedings taken against that original tenant—even under Section 22 of the MRC Act—would survive and affect his legal heirs as well. If the applicants' argument is taken to its logical conclusion, even after the landlords securing a decree if the original tenant died, that decree could not be executed against the legal representatives. The whole issue has to be taken up afresh—*de novo*. Such a process, I am sure, the law has not contemplated. I, therefore, hold that even against the third issue, the applicants' challenge

fails.

22. In *Laxmi Ram Pawar*, the Supreme Court has noted that a trespasser is included in the definition of 'occupier' in Section 2(e) (v) of the MRC Act. So what follows is that before the landlord seeks that trespasser's eviction, he should secure the Competent Authority's previous written permission under Section 22(1) of the 1971 Act. Shri Parab has fairly submitted this is not the proposition that directly affects the case. I reckon even by analogy *Laxmi Ram Pawar* fails to help the applicants.

Therefore, I dismiss the civil revision application. No order on costs.

(DAMA SESHADRI NAIDU, J.)