

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 776 OF 2013

Chheda Brothers	...Applicant
<i>Versus</i>	
Pandurang Narayan Mhatre (since deceased) (deleted)	
And others	...Respondents

WITH
Civil Revision Application NO. 777 OF 2013

WITH
Civil Revision Application NO. 778 OF 2013

WITH
Civil Revision Application NO. 779 OF 2013

....

Mr. Y. Mooman i/b. Ms. Manisha Gawde, Advocate for the Applicant.
Mr. G.S. Bhat, Advocate for the Respondents.

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CORAM : R. G. KETKAR, J.

DATE : 28th JANUARY, 2019

P.C.

1. Heard Mr.Y. Mooman, learned counsel for the applicant and Mr.G.S. Bhat, learned counsel for the respondents in all these C.R.As., at length.
2. These Civil Revision Applications take exception to the common judgment and decree dated 28/29.6.2006 passed by the learned Judge, Court Room No.15 of the Small Causes Court at Bombay

in R.A.E. Suit Nos.540/1493 of 1991, 538/1490 of 1991, 539/1491 of 1991 & 541/1492 of 1991 as also the judgment and decrees dated 16.8.2013 passed by the Appellate Bench of the Small Causes Court at Bombay in (2a) Appeals No.497/2006, 498/2006, 499/2006 & 496/2006. The Courts below decreed the suits under Section 13(1)(a) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, 'Act') read with Section 108(o) of the Transfer of Property Act, 1882 (for short, 'T.P. Act'). The applicants, hereinafter referred to as 'defendant No.1' were directed to quit, vacate and handover the peaceful possession of the property and structures constructed thereon viz. Plot of land bearing Survey No.175, Hissa No.2, Bhandup (West), Mumbai – 400 078 (for short, 'suit property') to the respondents, hereinafter referred to as the 'plaintiffs'. As common questions of law and facts arise in these Civil Revision Applications, the same can conveniently be disposed of this common order. For appreciating the controversy raised between the parties, the facts from C.R.A. No.776/2013 are taken into consideration. The relevant and material facts, giving rise to filing of the present C.R.A., briefly stated, are as under.

3. The plaintiffs instituted R.A.E. Suit No.540/1493 of 1991 against defendant No.1 *inter alia* contending that P.N. Mhatre (since deceased) along with his mother late Ambibai Narayan Mhatre had

executed lease deed on 1.6.1968 in favour of defendant No.1 herein and demised unto the defendant No.1 plot of land bearing Survey No.175, Hissa No.2, admeasuring 1560 square yards situate at village Bhandup, Taluka – Kurla, District – Bombay, more particularly described in Schedule I annexed as Exhibit-A to the plaint. The plaintiffs alleged that defendant No.1 had constructed the structures illegally and unlawfully and defendants No.2 to 13 are the illegal occupants of the said structures. The plaintiffs reproduced the relevant clauses of the lease deed in paragraph-3 of the plaint. In paragraph-4, the plaintiffs alleged that defendant No.1 have committed breach of the terms of the lease deed. They also set out therein grounds No. (a) to (c) alleging breach of the terms of the lease.

4. Defendant No.1 filed written statement traversing the allegations made by the plaintiffs. Defendant No.1 contended that at the time of leasing out the suit property, the structures were already standing in the suit property. Clause-6 of the lease deed permitted defendant No.1 to put up any temporary and/or permanent structure, building etc. on the suit property at their risk and costs. Defendant No.1 contended that as per the lease deed they have every right to put up structures from time to time and they have accordingly put up the structures. Said structures were and are being used for the purpose of

doing warehousing business. Defendant No.1 denied the assertions made in paragraph-4(c) of the plaint about committing breach of the lease by constructing structure on the suit property as alleged. All the structures were put up in conformity of the provisions of the Mumbai Municipal Corporation Act, 1888 and said fact is substantiated as the Corporation is recovering taxes and issuing necessary bills to defendant No.1.

5. On the basis of the pleadings of the parties, the learned trial Judge framed the necessary issues. The parties adduced evidence. After considering the material on record, by order dated 28/29.6.2006, the learned trial Judge decreed the suit and other suits in the companion Civil Revision Applications. The learned trial Judge held that the plaintiffs proved that defendant No.1 had committed breach of terms of the lease deed dated 1.6.1968 and that defendant No.1 have illegally constructed structures in the suit plot of land without consent of the plaintiffs. The learned trial Judge further held that the plaintiffs proved that defendant No.1 have illegally sub-let the illegal structures to defendants No.2 to 13. The learned trial Judge accordingly decreed the suit.

6. Aggrieved by this decision, defendant No.1 preferred Appeal. By order dated 16.8.2013, the Appellate Court dismissed (2a) Appeal No.497/2006. It is against these orders, defendant No.1 have instituted

present Civil Revision Applications.

7. In support of these applications, Mr. Mooman strenuously contended that the Courts below have committed several errors of law apparent on the face of record. The findings recorded by the Courts below are perverse. He submitted that no case under Section 13(1)(a) of the Act is made out by the plaintiffs. He submitted that at the time of leasing out the suit property, the structures were already standing therein. In other words, defendant No.1 did not put up any structure on the suit property. He submitted that even in the plaint and in particular paragraphs-3 and 4, the plaintiffs did not allege that defendant No.1 have carried out permanent construction. He submitted that though the learned trial Judge held that the plaintiffs proved that defendant No.1 had illegally constructed in the suit plot of land without the consent of the plaintiffs, the Appellate Court held that the construction was carried out with the consent of the landlord. Though the learned trial Judge decreed the suit also on the ground of unlawful sub-letting, the Appellate Court negated the ground of unlawful sub-letting.

8. Mr. Mooman submitted that the plaintiffs have also not established the ingredients of clause (o) of Section 108 of T.P. Act. The plaintiffs did not allege that defendant No.1 have changed the user of the suit property. As no ground is made out, it was not necessary for

defendant No.1 to adduce evidence. Mr. Mooman further submitted that the Act does not say that the construction can not be carried out without permission of the Planning Authority. In fact the Rent Control Legislation is silent on this point. He also relied upon the decision of the Constitution Bench of the Apex Court in **V. Dhanapal Chettiar Vs. Yesodai Ammal, AIR 1979 SC 1745** to contend that the tenant becomes liable to be evicted and forfeiture comes into play only if he has incurred the liability to be evicted under the State Rent Act and not otherwise. In the present case, the plaintiffs have not established that defendant No.1 are liable to be evicted as they have incurred the liability under the Act. He, therefore, submitted that the applications require consideration.

9. On the other hand, Mr. Bhat supported the impugned orders. He submitted that the plaintiffs have claimed possession by invoking grounds under Section 13(1)(a) of the Act read with Section 108(o) of the T.P. Act and have not invoked the ground under Section 13(1)(b) of the Act. He has taken me through the evidence of defendant's witness and the findings recorded by the Courts below. He submitted that after appreciating the evidence on record, the Courts below have concurrently decreed the suit under Section 13(1)(a) of the Act read with Section 108(o) of the T.P. Act and, therefore, no case is made out for interfering with the impugned orders in exercise of powers under Section 115 of

C.P.C.

10. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. A perusal of paragraph-3 of the plaint shows that the plaintiffs came with the case that both on the completion of any building or erection and at all times and during the continuance of the demise defendant No.1 have to observe and confirm to all the bye-laws, rules and regulations of the Municipal Corporation of Greater Bombay or of other body having authority in that behalf or which may be in force for the time being relating in any way to the demised premises and any building thereon.

11. In paragraph-4, the plaintiffs alleged that defendant No.1 were irregular in the payment of taxes to the Corporation and acts of failure on their part, the Corporation had advertised the suit property for auction. Because of this, reputation of the plaintiffs was affected and this has caused them mental agony. The plaintiffs further contended that defendant No.1 committed the breach of the terms of the lease by constructing structure on the suit property without observing and confirming and/or in the total contravention of the provisions of the Bombay Municipal Corporation Act and the Development Control Rules. Defendant No.1 have constructed several structures on the suit property

without any sanction of the plan by Municipal Corporation of Greater Bombay. Defendant No.1 have thus committed the breach of the terms of the lease.

12. A perusal of the written statement filed by defendant No.1 shows that defendant No.1 contended that by virtue of clauses of the lease, defendant No.1 had every right to put up structures from time to time and they have accordingly put up the structures. The said structures were and are being used for the purpose of doing warehousing business. As far as defendants No.2 to 13 are concerned, they were permitted to store their goods on warehousing basis without possession being given to them.

13. In paragraph-7, the defendants denied the assertions made in paragraph-4(c) of the plaint about committing breach of the terms of the lease by constructing structure on the suit property. Defendant No.1 contended that all these structures have been put up in conformity with the provisions of the Bombay Municipal Corporation Act. This is substantiated from the fact that the Corporation is recovering taxes and issuing necessary bills to the defendants.

14. The plaintiffs examined PW-1 Vasant Pandurang Mhatre (plaintiff No.1 herein). Mr. Mooman has invited my attention to the cross-examination of this witness. The relevant portion of his cross-

examination is to the following effect :

“.... It is true that as per this lease deed the structure which was to be put up upon the suit deed the structure which was to be put up upon the suit plot of land was under the responsibility of the defts. For the construction of the structure our permission was not required. On the date of lease Ex-A there was not structure at all standing on any part of land. It is true that there was structure upon the suit plot of land at the time when this lease deed Ex-A was executed. I now say that the said structure was of our 'Totha' but that was removed in the year 1960 and on the date of this lease deed there was no any structure standing thereon. It is true that it has been wrongly stated in this lease deed 'with the building and erections now'.

15. Mr. Mooman submitted that PW-1 admitted that in the lease deed reference is made to the buildings and structures standing thereon. Thus, the admission of PW-1 demolishes the case of the plaintiffs that defendant No.1 had constructed the structures illegally without obtaining permission of the Corporation. It is not possible to accept this submission. A perusal of the above extracted portion clearly shows that the structures which were standing in the suit property which were erected earlier were removed in the year 1960 and on the date of the lease deed i.e. 1.6.1968, no structures were standing on the suit property. The Appellate Court has considered this aspect from paragraphs-21 to 52. In paragraph-21 the Appellate Court reproduced clauses (a) to (d) of the lease deed. In paragraph-25, the Appellate Court

referred to the assertions made in paragraph-7 of the written statement. In paragraph-26, reference was made to the cross-examination of the defendant's witness. In paragraph-27, Appellate Court recorded a finding that the defendant did not place on record any permission from the Planning Authority. In paragraph-29, Appellate Court referred to the decision of this Court in **Sidharam M. Yanagandul & Anr. Vs. State of Maharashtra & Anr., 2007(4) Bom.C.R. 444** wherein this Court observed that if the structure is constructed prior to 17.4.1962 without the permission is assessed to Municipal Tax it does not alter its status as unauthorized structure. In the present case, admittedly the lease deed is executed on 1.6.1968 and the structures which were earlier standing were removed in the year 1960.

16. In paragraph-31, the Appellate Court referred to clause (d) of the lease deed which required defendant No.1 to observe and confirm to all the bye-laws, rules and regulations of the Municipal Corporation of Greater Bombay. In paragraph-32, the Appellate Court considered the submission of defendant No.1 based on clause (6) which permitted them to put up any temporary and/or permanent structure, building etc. on the suit property at their risk and costs. The Appellate Court observed that when a thing is allowed to be done or permitted to be done it will be done in the legal way and not illegally or unauthorizedly.

In other words, implicit in clause (6) of the lease deed is that defendant No.1 will follow due procedure of law by obtaining permission from the Competent Authority for carrying out constructions.

17. In paragraph-42, the Appellate Court noted that it has come in the cross-examination to the effect that as per the lease deed it was responsibility of the defendant to put up the structure on the suit land. The Appellate Court observed that erection of structure by defendant No.1 without permission from the corporation in the facts of the present case cannot be said to be legal and there cannot be estoppel against the statute. The Appellate Court also referred to the fact that the property was put to auction for non-payment of the taxes of the Corporation.

18. In paragraph-52, the Appellate Court ultimately recorded conclusion that the structures were erected by defendant No.1 without permission of the Municipal Corporation. Defendant No.1 also did not pay the taxes of the corporation when it was their liability. The Appellate Court accordingly decreed the suit under Section 13(1)(a) of the Act read with Section 108(o) of the T.P. Act.

19. Mr. Mooman submitted that the plaintiffs have not established the ingredients of clause (o) of Section 108 of T.P. Act. Section 108(o) of the T.P. Act reads thus :

“108 - Rights and liabilities of lessor and lessee.-- In the absence of a contract or local

usage to the contrary, the lessor and the lessee of immovable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased:-

XXXXX

XXXXX

XXXXX

(o) the lessee may use the property and its products (if any) as person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell or sell, timber, pull down or damage buildings belonging to the lessor, or work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto.”

20. As mentioned earlier, after appreciating the evidence on record the Courts below have concurrently held that the defendants have committed breach of the terms of the lease by constructing the structures on the suit property without obtaining permission of the planning authority. Defendant No.1 did not use the suit property as person of ordinary prudence would use them if they were his own. Defendant No.1 have committed acts which are destructive or permanently injurious to the suit property. In my opinion the case is, therefore, clearly covered by clause (o) of Section 108 of the T.P. Act.

21. Mr. Mooman also relied upon the decision of the Apex Court

in **V. Dhanapal Chettiar** (supra) to contend that the tenant becomes liable to be evicted and forfeiture comes into play only if he has incurred the liability to be evicted under the State Rent Act and not otherwise. In the present case, the plaintiffs have invoked the ground under Section 13(1)(a) of the Act which lays down that the tenant is liable to be evicted if he commits any act contrary to the provision of clause (o) of Section 108 of T.P. Act. In view thereof, said decision does not advance the case of defendant No.1.

22. In the case of **Shri M.L. Sethi vs. Shri R.P. Kapur, (1972) 2 SCC 427**, the Apex Court has considered the scope of revision under Section 115 of C.P.C. In paragraph-12 of that decision, the Apex Court observed that the jurisdiction of the High Court under Section 115 of C.P.C. is a limited one. The Apex Court considered following decisions :

- (i) **Rajah Amir Hassan Khan vs. Shoo Baksh Singh, (1884) LR 11 IA 237;**
- (ii) **Balakrishna Udayar vs. Vasudeva Aiyar, (1917) LR 44 IA 261, 267;**
- (iii) **N.S. Venkatagiri Ayyangar vs. Hindu Religious Endowments Board, Madras, (1948-49) LR 76 IA 73;**
- (iv) **Manindra Land and Building Corporation Ltd., vs. Bhutnath Banerjee and others, AIR 1964 SC 1336;**
- (v) **Vora Abbasbhai Alimahomed vs. Haji Gulamnabi Haji Safibhai, AIR 1964 SC 1841; &**
- (vi) **Pandurang Dhuni Chowgule vs. Maruti Hari Jadhav, AIR 1966 SC 153.**

23. The Apex Court quoted the observations of Privy Council in

Rajah Amir Hasan Khan (supra) which is to the following effect :

“The question then is, did the judges of the lower Courts in this case, in the exercise of their jurisdiction, act illegally or with material irregularity. It appears that they had perfect jurisdiction to decide the question which was before them, and they did decide it. Whether they decided rightly or wrongly, they had jurisdiction to decide the case; and even if they decided wrongly, they did not exercise their jurisdiction illegally or with material irregularity.”

24. The Apex Court further quoted its observations in the case of

Pandurang Chowgule (supra) as under :

“The provisions of Section 115 of the Code have been examined by judicial decisions on several occasions. While exercising its jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross they may be, or even errors "of law, unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. As clauses (a), (b) and (c) of Section 115 indicate, it is only in cases where the subordinate Court has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the revisional jurisdiction of the High Court can be properly invoked. It is conceivable that points of law may arise in proceedings instituted before subordinate courts which are related to questions of jurisdiction. It is well settled that a plea of limitation or a plea of res judicata is a plea of law which concerns the jurisdiction of the Court which tries the proceedings. A finding on these pleas in favour of the party raising them would oust the jurisdiction of the court and so, an erroneous decision on these pleas can be said to be concerned with questions of jurisdiction which fall

within the purview of Section 115 of the Code. But an erroneous decision on a question of law reached by the subordinate court which has no relation to questions of jurisdiction of that court, cannot be corrected by the High Court under Section 115.”

25. The above decision reiterates that under Section 115 of C.P.C., the High Court has to satisfy itself on three matters, namely,

- (a) that the order of the subordinate Court is within its jurisdiction;
- (b) that the case is one in which the Court ought to exercise jurisdiction, and
- (c) that in exercising jurisdiction the Court has not acted illegally, that is, in breach of some provisions of law, or with material irregularity,

that is, by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision. If the High Court is satisfied on these three matters, it has no power to interfere because it differs from conclusion of the subordinate Court on question of facts or of law.

26. Applying the tests laid down by the Apex Court, as aforesaid, to the facts of the present case, it cannot be said that defendant No.1 have made out a case for invocation of powers under Section 115 of C.P.C.. Defendant No.1 are not in a position to demonstrate that the findings recorded by the Courts below are perverse, being based upon no evidence or that they are contrary to the evidence on record. Defendant No.1 are also not in a position to demonstrate that no

reasonable person would have arrived at the conclusions other than arrived by the Courts below. Merely because on the basis of evidence on record another view is possible, that itself is no ground for invocation of powers under Section 115 of C.P.C. Hence, Civil Revision Applications fail and the same are dismissed with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)