

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 17 OF 2019

Mrs. Promila Anil Sharma

...Applicant

Versus

Mrs. Madhuri Pratap Vardhe

...Respondent

....

Mr. Sandesh Patil a/w. Ms. Anusha P. Amin, Advocate for the Applicant.

Ms. Shweta Agrawal, Advocate for the Respondent.

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CORAM : R. G. KETKAR, J.

DATE : 10th JULY, 2019

P.C.

1. Heard Mr. Sandesh Patil, learned counsel for the applicant and Ms. Shweta Agrawal, learned counsel for the respondent, at length.
2. By this application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicant, hereinafter referred to as the 'defendant', has challenged the judgment and decree dated 21.11.2017 passed by the learned Jt. Civil Judge, Junior Division, Thane in R.C.S. No.870/2014 as also the judgment and decree dated 10.10.2018 passed by the learned Ad-hoc District Judge-6, Thane in Regular Civil Appeal No.9/2018. By these orders, the Courts below decreed the suit instituted by the respondent, hereinafter referred to as the 'plaintiff' and directed the defendant to hand over vacant and peaceful possession of flat No.G-05, 'B' Wing, Heena Park, Railway

Crossing Road, Geeta Nagar, Bhayandar (West), Thane (for short, 'suit premises').

3. In support of this application, Mr. Patil strenuously contended that the decree passed by the Courts below is without jurisdiction and is a nullity. He submitted that the plaintiff has instituted suit in the Court of Civil Judge, Junior Division at Thane alleging that the defendant is a gratuitous licensee. He invited my attention to the finding recorded by the learned trial Judge in paragraph-8. He submitted that in the notice dated 17.6.2014, the plaintiff alleged that the defendant is a trespasser. In view thereof, the Court of Civil Judge, Junior Division at Thane lacks inherent jurisdiction. The decree passed by the Courts below is, therefore, a nullity.

4. On the other hand, Ms.Agrawal submitted that the suit is between the licensor and the licensee under the Maharashtra Rent Control Act, 1999 (for short, 'Act'). The Court of Civil Judge, Junior Division at Thane is competent to entertain and try the suits between the licensor and the licensee arising from the provisions of the Act. She submitted that the Courts below after appreciating the evidence on record held that the plaintiff established that the defendant is a gratuitous licensee in respect of the suit premises and that the license has been duly terminated. She, therefore, submitted that no case is

made out for interfering with the impugned orders.

5. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. As mentioned earlier, the plaintiff has alleged that the defendant is a gratuitous licensee and that she has terminated the license. After appreciating the evidence on record, the Courts below have concurrently held that the plaintiff has established that the defendant is her gratuitous licensee and that the license is validly terminated. In view thereof, I do not find that the Courts below have committed any error in passing the eviction decree.

6. Insofar as the contention that the Court of Civil Judge, Junior Division at Thane does not have jurisdiction to entertain and try the suit is concerned, it is conceded that the suits under the Act are entertained and tried by the Court of Civil Judge, Junior Division. The suit is instituted by the plaintiff contending that she is the licensor and the defendant is the licensee.

7. In the case of **Prabhudas Damodar Kotecha Vs. Manhabala Jeram Damodar, 2013(15) SCC 358**, the Apex Court has held that the Small Causes Court has jurisdiction to entertain and try the suit against the gratuitous licensee. It is admitted position that in the Muffasil the Court of Civil Judge, Junior Division is invested with the

powers to entertain and try the suits arising under the Act. In view thereof, I do not find any merit in the submission of Mr. Patil that only the Civil Court has jurisdiction to entertain and try the suit.

8. The defendant is 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. The defendant is 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, no case is made out for invocation of powers under Section 115 of C.P.C. Civil Revision Application fails and the same is dismissed with no order as to costs.

9. At this stage, Ms.Amin orally applies for stay to the eviction decree for a period of twelve weeks from today. She states that the applicant is in possession and nobody else is in possessions. She has neither created third party interest nor parted with the possession. She will hereafter neither create third party interest nor part with the possession. She further states that the applicant and all adult family members residing in the suit premises are ready and willing to give usual undertaking within two weeks from today with advance copy to the

other side. Learned Counsel for the respondent opposes said prayer.

10. Having regard to the fact that applicant desires to challenge this order before the Apex Court, in my opinion, ends of justice would be met by staying eviction decree for a period of twelve weeks from today subject to the applicant and all adult members residing in the suit premises giving usual undertaking to this Court within two weeks from today with advance copy to other side incorporating therein:

- (i) that they are in actual possession of the suit premises and nobody else is in possession;
- (ii) that they have so far neither created third party interest nor parted with the possession of the suit premises;
- (iii) that they will hereafter neither create third party interest nor part with the possession of the suit premises;
- (iv) that they will deposit the arrears of compensation @ Rs.5,000/- per month from November, 2017 till handing over possession of the suit premises in this Court within eight weeks from today under intimation in writing to the learned counsel for the respondent;
- (v) that in case the applicant is unable to obtain suitable orders from the higher Court within twelve weeks from today, they will deliver vacant and peaceful possession of the suit premises to the respondent; and
- (vi) that they will not apply for extension of time.

11. In view thereof, notwithstanding dismissal of Civil Revision Application, eviction decree shall remain stayed for a period of twelve

weeks from today, subject to the applicant filing undertaking in the aforesaid terms within two weeks from today, with copy in advance to the other side. It is made clear that in case the applicant does not file undertaking in the above terms and/or commits breach of any of the clauses of the undertaking, the interim order shall stand vacated without further reference to the Court. If the arrears of compensation in aforesaid terms are deposited in this Court, the respondent is permitted to withdraw the same unconditionally.

12. List the application after three weeks for ensuring that the undertaking is filed within two weeks from today. In case, the applicant does not get suitable order from the higher Court within twelve weeks from today, list the application after fourteen weeks for reporting compliance of clause 10(v), as aforesaid. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)