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

WRIT PETITION NO.2368 OF 2020

Ratanlal Babulal Agarwal

... Petitioner

Versus

The New Piece Goods Bazar Co. Ltd.

(Sheth Moolji Jaitha Cloth Market) and Anr.

...Respondents

Mr. Kunal Bhanage, for the Petitioner.

Mr. S. M. Vyas, for Respondent No.1.

CORAM : REVATI MOHITE DERE, J.

DATE : 13th MARCH, 2020

P.C. :

1. Heard learned counsel for the parties.
2. By this Petition, the Petitioner has impugned the order dated 6th February 2018, passed by the learned Judge, Court Room No.8, Court of Small Causes at Bombay, in Marji Application No. 344 of 2017, by which, the petitioner's said application seeking setting aside of the ex-parte Judgment and Decree dated 27th February, 2015, was rejected, as well as the order dated 17th December, 2019, passed by the Appellate Bench of the Small Causes Court, Bombay, in Miscellaneous Appeal No.130 of 2018, by which, the Appellate Bench confirmed the order passed by the trial Court.

3. Learned Counsel for the Petitioner submits that the petitioner (original defendant no.2) be given one opportunity to contest the Suit on merits. He submits that the petitioner cannot be punished for the acts of his advocate, inasmuch as, the petitioner had appointed an advocate to contest the case, however, the advocate failed to inform him about the progress of the case, as a result of which, the trial Court passed an ex-parte decree.

4. Learned Counsel for the Respondent No.1 opposed the petition and submitted that no interference was warranted in the impugned orders.

5. The respondent no.1 is the original plaintiff who had filed a Suit under Section 16(1)(e) and (n) of the Maharashtra Rent Control Act, 1999 (hereinafter referred to as 'the Rent Act'). The subject matter of the suit is Shop No.687, at Govind Chowk, M.J. Market, Mumbai – 400 002. The respondent no.1-plaintiff is the owner and landlord of the said suit-shop. The respondent no.1 –plaintiff had created tenancy in the said suit-shop in the name of Defendant no.1, a partnership firm and as such the Defendant No.1 was a monthly tenant in respect of the said suit-shop. The Defendant No.1 although initially used the said premises for his own use and occupation, however, later was not occupying the said suit-shop

continuously for more than six months, immediately preceding the date of the suit. It was found that the petitioner (defendant no.2) was in possession of the suit-shop and was running a business in the name and style of “M/s. R. B. Textile Mill”. According to the respondent no.1 – plaintiff, the petitioner was occupying the said suit-shop unlawfully and as on enquiry, it was found that the petitioner was put in exclusive possession of the suit-shop by defendant no.1, the respondent no.1 – plaintiff filed a suit in the Small Causes Court at Bombay, being R. A. E. Suit No.1165/1886 of 2011 as against the defendant no.1 and the petitioner (defendant no.2).

6. Defendant no.1 was served with the suit summons. Defendant no.1 appeared in the said suit and filed his written statement and denied the suit claim. According to defendant no.1, defendant no.2 was never put in possession of the said suit-shop. The petitioner (defendant no.2) was also served with the suit summons, however, despite service of summons, defendant no.2 failed to appear before the trial Court, as a result of which the suit proceeded ex-parte against the petitioner (defendant no.2).

7. Issues were framed. Plaintiff led his evidence, both oral and documentary, whereas, defendant no.1 although contested the suit by filing

his written statement, did not lead either oral or documentary evidence. The trial Court after considering the material on record decreed the suit vide Judgment and Decree dated 27th February, 2015 and passed the following order:-

ORDER

- “1. Suit is decreed with cost.
2. The defendant Nos. 1 and 2 are ordered to vacate the suit Shop No. 687 of Govind Chowk, M.J. Market, Mumbai 400 002 and hand over peaceful possession of same to plaintiff.
3. Until the possession of suit shop has been handed over to the plaintiff, the defendants are permanently restrained from parting with possession of suit shop or creating any third party therein.
4. A decree be drawn accordingly.”
8. According to the petitioner, he learnt of the said order only when the bailiff served a copy of the execution application on him on 29th October, 2015, pursuant to which the petitioner filed an application on 28th November, 2015 for setting aside the ex-parte decree passed against him and for restoration of the suit and several other reliefs. The trial Court vide order dated 6th February 2018, dismissed the Marji Application filed by the petitioner with costs. The trial court in para 11 of the said order observed

that the petitioner was served with summons and that one Mr. Lalit Jain had filed memo of appearance, however, the said advocate did not file his Vakalatnama. The trial Court after observing that the petitioner had not taken sufficient steps to either give instructions to his advocate or replace his advocate, found that the petitioner was not diligent in pursuing the case. The trial Court observed that it was extremely difficult to accept that for four years the petitioner's advocate despite giving him assurance, had not proceeded with the case. The said order dated 6th February, 2018 was challenged by the petitioner before the Appellate Bench of the Small Causes Court at Bombay. The Appellate Bench vide Judgment and Order dated 17th December, 2019, dismissed the Appeal with costs and as such confirmed the order of the trial court. The Appellate Bench also in para 9 has observed that the petitioner was not diligent for several years. It is also pertinent to note that defendant no.1, who was put in possession of the suit-shop as a tenant had contested the said suit only by filing his written statement and had not led any evidence to show that the suit shop was not sub-let by him to the petitioner (original defendant no.2).

9. Considering the aforesaid, no infirmity can be found in the impugned orders.

10. The Petition is accordingly dismissed and disposed of as such.
11. The petitioner to vacate the suit-shop within 3 weeks from today, failing which, the decree to be executed under police protection, if necessary. In the meantime, the petitioner shall not create any third party interest in the suit-shop.
12. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.