

CIVIL REVISION APPLICATION (ST.) NO. 29676 OF 2019

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DATE : 14th January 2020.

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under the provisions of Maharashtra Rent Control Act, 1999, for eviction on the ground of subletting and bonafide requirement. That the writ of summons of the said suit was accepted by one Mr.Hemant Raut on behalf of the applicant. Despite of the said fact, the applicant did not remain present in the said suit and therefore, the said suit was decreed ex-parte against the applicant. That the other two defendants i.e. respondent Nos. 4 and 5 appeared in the said suit before the Trial Court and contested it. The Trial Court after recording evidence and after hearing the parties therein was pleased to decree the said suit by its Judgment and Decree dated 30th November 2007. In due course of time, the respondent Nos.1 to 4 initiated execution proceedings. The applicant thereafter filed MARJI Application No. 282 of 2016 for setting aside the said ex-parte decree presumably under Order 9 Rule 13 of the Code of Civil Procedure. The Trial Court by its Order dated 29th June 2018 has dismissed the said application with costs. Miscellaneous Appeal No. 384 of 2018 filed against the said Order dated 29th June 2018 has also been turned down by the Appellate Bench of the Small Causes Court at Mumbai by upholding the Order passed by the Trial Court.

4] Mr.Yamgar, learned counsel for the applicant submitted that, Mr.Hemant Raut was never in service of the applicant. That the suit summons was never served upon the applicant as per the provisions of law and that is the reason, the applicant did not remain present before the Trial Court and

contested the suit. He submitted that, the suit filed by the respondent Nos.1 to 4 against the applicant under the provisions of Maharashtra Rent Control Act itself is not maintainable. Mr.Yamgar, learned counsel for the applicant further submitted that, though the applicant has shifted its major business activity to Nagpur from the year 2000, the applicants have still maintained the suit premises and the manager is appointed to look after the said business. He therefore prayed that, the impugned Order may be set-aside by allowing the present appeal.

5] Learned counsel appearing for the respondent Nos.1 to 4 pointed out various documents on record and submitted that, as a matter of fact, the original defendant Nos.2 and 3 are partnership firms of the original defendant No.1. He submitted that, the said fact has been admitted by the Advocate for the applicant before the Appellate Court and the Appellate Court in para No.12 of the impugned Order has observed accordingly. He further submitted that, the plaintiff was successful in proving the fact on record that, the bailiff infact served the copy of writ summons upon the manager of the applicant i.e. Mr.Hemant Raut. He submitted that, therefore, there are no merits in the present appeal and same may be dismissed summarily.

6] A minute perusal of the Judgment and Order dated 30th November 2007 passed by the Trial Court would indicate that, the partners of defendant No.1 are also the partners of defendant Nos.2 and 3 (applicant herein) and in

those circumstances, evidence was laid by defendants witness No.2 as partner of defendant No.2. It is the categorical case of the plaintiff that, the defendant No.1 has sublet the suit premises i.e. shop Nos.2 and 3 to defendant Nos.3 and 2 respectively. The material available on record clearly indicates that, the suit summons on behalf of the applicant was accepted by Mr.Hemant Raut, who was present in the suit premises at the time when the bailiff visited it for service of summons. Even otherwise the partners of original defendant No.1 are the partners of defendant Nos.2 and 3 and therefore, a safe inference can be drawn that, the defendant No.3 was having sufficient knowledge about the suit instituted by the plaintiff. Despite knowledge, the applicant did not appear in the suit and therefore, the Trial Court was pleased to decree the suit ex-parte as against the applicant. The Appellate court in para No.3 has observed that, one Mr.Fajal Mohamed Yunis Sardaria has filed MARJI Application No.282 of 2016 and has stated that, he has already settled at Nagpur in the year 2005. It is further stated by the said partner that, infact on 18th June 2001 the applicant was not in possession of the suit premises and therefore, the question of service of summons on the applicant does not arises. It appears that, the applicant is changing stances at different stages of litigation and is not certain about its stand. As noted earlier, there is sufficient material available on record to indicate that, the defendant No.3/applicant was duly served with the writ of summons of the said suit and therefore, I find no merits in the contention of the

learned counsel for the applicant of its non service upon the defendant No.3.

7] After perusing the entire record, this Court is of the considered view that, both the Courts below have properly exercised their jurisdiction vested by law and have not exercised jurisdiction so vested with them. I therefore find that, both the Courts below have not committed any error, either on facts or on law.

8] In view thereof, I find no merits in Revision Application.

Revision Application is accordingly dismissed.

[A.S. GADKARI, J.]