

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 12754 OF 2019**

Prithviraj Vardichand Jain

.....Petitioner

Vs.

M/s. Sitaram Enterprises

.....Respondent.

Mr. Kunal Bhanage i/by Akshay Pawar for the Petitioner.

Mr.VN. Walawalkar i/by Amey C. Sawant for the Respondent.

CORAM : A. S. GADKARI, J.**DATE : 26th NOVEMBER, 2021.****P.C.:-**

Petitioner, Original Defendant, Tenant, has invoked jurisdiction of this Court under Article 227 of the Constitution of India, impugning Order dated 24th October, 2019 passed below Exh-14 in (2a) Appeal No.40 of 2015 in RAE & R Suit No.111/300 of 2003 by the Appellate Bench of the Court of Small Causes at Mumbai (Bandra Branch), thereby rejecting the said Application filed by him under Order 41 Rule 27 of the Code of Civil Procedure (for short, “*C.P.C.*”)

2 Heard Mr. Bhanage, learned counsel for the Petitioner and Mr. Walawalkar learned counsel for the Respondent, Original Plaintiff. Perused record.

3 Record indicates that, the Suit for eviction bearing No. RAE & R No.111/300 of 2003 filed by the Respondent,landlord has been decreed by the Trial Court by its Judgment and Order dated 21th August, 2015 and the Petitioner has been directed to hand over vacant and peaceful possession of the Suit premises i.e. shop No.3, more specifically mentioned in the operative part of the impugned Order dated 21th August, 2015. Petitioner thereafter preferred an Appeal No.40 of 2015 on 20th October, 2015. He subsequently filed Application below Exh-14 on 19th October, 2019, under Order 41 Rule 27 of the CPC for production of additional evidence before the Appellate Court. As noted earlier, the said Application has been rejected by the Appellate Court by its impugned Order dated 24th October, 2019.

4 Mr. Bhanage, learned counsel for the Petitioner submitted that, the Respondent had approached the Trial Court with a specific plea that, he did not have any other premises in the suit property and therefore the suit premises was required for its administrative convenience. He further submitted that, the authorized representative of the Respondent firm/partner of the Respondent entered into witness box and made palpably false statement on oath that, no other document has been executed in respect of tenancy of shop No.2 except the deposit receipt while transferring the said shop in the name of Smt. Jaya P. Khanchandani in the month of June 2004. He submitted that, of late the Petitioner got knowledge about the execution of tenancy agreement dated 12th October,

2004 between the Respondent and Smt. Jaya P Khanchandani and with two other persons and therefore the Petitioner wants to bring the said facts on record by way of leading additional evidence as contemplated under Order 41 Rule 27 of the CPC. He submitted that, the Appellate Court has erroneously rejected the said Application filed under Order 41 Rule 27 of the CPC without taking into consideration the said vital aspect of the matter.

5 Per contra, Mr. Walawalkar, learned counsel for the Respondent vehemently opposed the present Petition and submitted that, the shop No.2 which has been given on rental basis to Smt. Jaya P Khanchandani is adjacent to the shop of the Petitioner bearing shop No.3 and therefore, the Petitioner was having every knowledge about the fact that, the said premises was allotted in favour of Smt. Jaya P Khanchandani in the year 2004 itself and despite the said fact, he did not either cross-examine the Respondent's witness in detail in that behalf or requested the Trial Court to issue summons to Smt. Jaya P Khanchandani for recording her evidence to substantiate his claim. He submitted that, the present Application under Order 41 Rule 27 is filed belatedly after a delay of about 4 years from the date of filing of said Appeal. That, the said delay has also not been explained by the Petitioner. He therefore prayed that, the present Petition may be dismissed.

6 It is an admitted fact on record that, the Petitioner cross-examined P.W. No.1 on 31st January, 2014 and on subsequent occasions. The Trial Court passed impugned Judgment and decree on 21st August, 2015. Petitioner preferred present Appeal on 20th October, 2015 before the Appellate Bench of the Small Causes Court at Mumbai and the present Application under Order 41 Rule 27 was filed on 19th October, 2019.

7 The principal document on the basis of which it is contended by the learned counsel for the Petitioner that, a false deposition is made by the witness of Respondent is dated 12th October, 2004, executed between the Respondent and Smt. Jaya P. Khanchandani. The present Suit was decreed on 21st August, 2015. The shop premises of Petitioner bearing No.3 is adjacent to shop No.2 i.e. the shop premises of Smt. Jaya P. Khanchandani. The occupancy of the said shop No.2 by Smt. Jaya P. Khanchandani was well within the knowledge of the Petitioner since the first date of her occupation and therefore the Petitioner cannot be permitted to adopt a plea that, he got knowledge of the fact that an agreement dated 12th October, 2004 creating tenancy in favour of Smt. Jaya P. Khanchandani in the month of October 2019 for the first time. The plea raised by the Petitioner in that behalf is against the settled principles of law and also against the natural conduct of a man of common prudence. Petitioner has clearly failed to point out the fact that, despite due diligence he could not come across the fact or that piece of evidence till the time of passing of the

decree. As far as other two documents mentioned in the Application below Exh-14 is concerned, the same reasoning is applicable to it. It is to be further noted here that, the present Application under Order 41 Rule 27 of the CPC is filed after lapse of about 4 years of filing of the present Appeal.

It appears that, the Petitioner got up from the deep slumber after about 15 years and realized that perhaps the Appeal may also go against him and therefore as and by way of an after thought, the present Application under Order 41 Rule 27 is filed.

8 The Supreme Court in the case of *Shalini Shyam Shetty & Anr. Vs. Rajendra Shankar Patil*, reported in (2010) 8 SCC 329 has enumerated the principles in the exercise of High Court's jurisdiction under Article 227 of the Constitution of India. It is held that, the High Courts cannot, at the drop of a hat, in exercise of its power under Article 227 of the Constitution, interfere with the Orders of tribunals or courts interior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases, where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court. That, the High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

It is further held that, in exercise of its power of superintendence, the High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words, the jurisdiction has to be very sparingly exercised. That, the power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

The afore-stated view expressed in the case of *Shalini S. Shetty (Supra)* has been further affirmed by the larger Bench of the Supreme Court in the case of *Radhey Shyam & Anr. Vs. Chhabi Nath and Ors. Reported in (2015) 5 SCC 423.*

9 After perusing entire record, this Court is of the considered view that, the Appellate Court has not committed any error either in law or on facts while passing the impugned Order dated 24th October, 2019 below Exh-14.

Petition being dehors of merits, is accordingly dismissed.

10 At this stage, Mr. Bhanage, learned counsel for the Petitioner submitted that, the Petitioner intends to challenge this Order before the Hon'ble Apex Court and therefore ad-interim relief granted by Order dated

25th October, 2021 may be continued for a period of four weeks from today.

At his request, the effect and implementation of the present Order is stayed for a period of 4 weeks from the date of uploading of the present Order on the official Website of Bombay High Court.

(A.S. GADKARI, J.)

SANJIV
SHARNAPPA
MASHALKAR

Digitally signed
by SANJIV
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