

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

925 CIVIL REVISION APPLICATION NO.47 OF 2022

ROHIDAS SOMJI MALI
VERSUS
MOHIYODDIN SAYYAD ROSHAN

...
Advocate for Petitioner : Mr. Kishore C. Sant
...

CORAM : MANGESH S. PATIL, J.

DATE : 06 APRIL 2022

PC :

Leave granted to correct the prayer clause.

2. This is the revision under section 115 of the Code of Civil Procedure by the original plaintiff in a suit for eviction under section 16(1)(g) of the Maharashtra Rent Control Act, being aggrieved and dis-satisfied by the dismissal of his suit as well as the appeal preferred by him under section 34 of that Act whereby both the courts concurrently held that the relationship of landlord and tenant did not exist between the parties.

3. I have heard the learned advocate Mr. Sant.

4. The suit for eviction was filed with the averments that since the petitioner was in need of money, he had borrowed some money from the respondent and the possession of the suit premises was handed over as a security. It was agreed that the money was to be

repaid without interest within 3 years. The transaction was evidenced by a writing on a stamp paper. After repayment of loan, when he was about to get the possession back, he was transferred to a different place. Since there was home loan obtained by him and anyhow he was due and payable of monthly installments for repayment of the home loan, he allowed the respondent to continue to occupy the suit premises and the latter started paying monthly installments in the loan account in lieu of rent. The relationship of landlord and tenant, therefore, came into being. After his retirement, he intended to occupy the suit premises but in spite of his demand, the respondent refused to vacate. Hence the suit.

5. The respondent admitted about having entered into possession pursuant to an agreement which according to him was an agreement of sale. He had parted with earnest money and occupied the premises. Later on he started paying the balance amount of consideration in installments by depositing an amount of Rs. 4000/- per month with the petitioner's bank. He, therefore, flatly denied existence of any relationship between the parties as that of landlord and tenant.

6. The trial court as also the lower appellate court have recorded a concurrent finding that the respondent was in possession of the suit property in part performance of the agreement to sell and no relationship existed between them that of landlord and tenant and dismissed the suit and the appeal.

7. The learned advocate Mr. Sant submits that both the courts have recorded a perverse finding and reached an illegal conclusion. There was no reason for the respondent to continue to deposit periodical amount in the petitioner's bank that too after repayment of the loan amount. That was indicative of the fact that there was in existence relationship of landlord and tenant. Though the courts below readily accepted the statement of the respondent on oath, a similar statement of the petitioner was discarded for no reason. The revision be admitted.

8. I have carefully considered the submissions and have perused the judgments of the courts below.

9. Needless to state that this being a revision under section 115 of the Code of Civil Procedure, this court can step in only if the observations and the conclusions by the courts below are perverse, arbitrary or capricious or that they have exercised the jurisdiction not vested in them or have refused to exercise it though it vested in them.

10. Bearing in mind the limitation on the powers of this court while considering the prayer for undertaking a revision, as is mentioned herein-above, both the courts below have recorded a concurrent finding that the respondent is in possession pursuant to the agreement of sale and not as a tenant and no relationship of landlord tenant existed between the parties. In arriving at such a concurrent finding,

they have taken into account the fact that the petitioner himself had come with the case that initially the respondent was inducted in the premises by executing an agreement of sale *albeit* it was his stand that the agreement was not to be acted upon.

11. The fact remains that a writing in the nature of agreement of sale was brought into existence while inducting the respondent into the suit premises. Bearing in mind the fact that the parties were careful enough to bring into existence some formal writing, one cannot comprehend as to how and why they have decided not to act upon agreement of sale and change the relationship between them as landlord and tenant. No such similar writing was brought into existence. A man of prudence who was careful enough to bring into existence the agreement of sale though it was not to be acted upon would have been equally prompt to create some kind of writing if the respondent was subsequently to be considered as a tenant.

12. As has been rightly noted by the courts below, it was oath against oath. Merely because respondent continued to deposit installment in the appellant's account, they have taken a plausible view. The payment of installments could have been towards the balance amount of consideration. In this regard, it is further pertinent to note that in spite of the appellant having come with a specific case of existence of agreement which according to him was not to be acted upon, he was bold enough to deny his signature thereon.

13. All these facts, circumstances and evidence has been carefully considered by the courts below in reaching a conclusion which by no stretch of imagination can be said to be either perverse or arbitrary so that this court can re-appreciate it while exercising limited jurisdiction.

14. The Revision is dismissed.

[MANGESH S. PATIL]
JUDGE

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