

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO.4 OF 2022

Khemchand Tribhuvan Doshi,
Deceased, through his L.R.
Kirit Khemchand Doshi

... APPLICANT

VERSUS

Shri Mayurchandra Ramdas Bhatiya
and others

... RESPONDENTS

.....

Shri P.R. Katneshwarkar, Advocate for applicant
Shri S.P. Brahme, Advocate instructed by
Shri S.P. Shah, Advocate for respondent No.1

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CORAM : R. G. AVACHAT, J.

Date of reserving order : 24th June, 2022

Date of pronouncing order : 6th July, 2022

ORDER :

This revision application has been moved by the original defendant No.1. He has suffered a decree passed by the trial Court, directing him to vacate the suit premises. The decree passed by the trial Court has been confirmed by the appellate Court. Hence the present revision application.

2. The suit premises is a shop block admeasuring 30 ft. x 15 ft. located at a commercial hub of city of Jalgaon. The

applicant was said to have been holding the suit premises as a tenant at a monthly rent of Rs.25=83 ps. The respondent No.1 is the owner of the suit premises. He filed the suit, Regular Civil Suit 266/2000 for eviction of the applicant from the suit premises, initially on three grounds under the Bombay Rent Act. In the course of time, two of the grounds on which eviction was sought for were given up. Ultimately, the ground on which the eviction was sought for was sub-letting. The case of the respondent/ landlord is that the applicant has sublet the suit premises to the defendant No.6 M/s Bhagwandas Sons has been upheld by the trial Court and appellate Court as well.

3. Heard learned counsel for the parties. The learned counsel for the applicant would submit that, both the Courts have travelled beyond the pleadings. Evidence was permitted to be adduced which did not have foundation in the pleadings. As such, it is a case of the judgment of the trial Court and that of the first appellate Court being perverse. The conclusions arrived at were based on presumptions, surmises and conjectures. The relevant clauses in the deed of partnership have not been properly interpreted. A tenant in possession of the tenanted premises, if enters into a

partnership to do a business and uses the suit premises therefor, the same does not amount to subletting. The learned counsel relied on the judgment of the Apex Court in case of **Ram Sarup Gupta Vs. Bishun Narain Inter College** [1987 AIR 9SC) 1242. He would submit that, In view of the terms embodied in the deed of partnership, the applicant has continued to be in possession of the suit premises. In some part of the suit premises, the applicant was running his own business under the name "Shilpa Traders". The learned counsel, therefore, urged for allowing the revision application with setting aside the impugned decree.

4. Learned counsel for the respondent/ landlord would, on the other hand, submit that, the trial Court and the first appellate Court have, on appreciation of the evidence in the suit, came to a conclusion that the ground of subletting to have been duly proved. It is a case of concurrent findings of facts. In exercise of revisional jurisdiction, this Court has very limited scope to interfere with the concurrent findings of facts. According to him, although a tenanted premises may be used by the tenant for his partnership business, the Courts are not precluded from lifting a corporate veil of such a partnership to find real intention behind the transaction. According to him,

such transactions are entered into clandestinely. Direct evidence thereof is hardly available. Inference is to be drawn from the attending circumstances. On the question of permitting evidence to be let-in sans foundation thereto in the pleadings, learned counsel has placed reliance on the Constitution Bench judgment of the Apex Court in case of **Bhagwati Prasad Vs. Shri Chandramaul**, [AIR 1966 SC 735]. He also relied on a host of authorities in support of his submission. The learned counsel ultimately urged for dismissal of the revision application.

5. Considered the submissions advanced. Perused the evidence relied on. Gone through the citations placed on record.

6. It is a case of concurrent findings of facts. The suit premises admeasures 30 ft. x 15 ft. The premises are used for commercial purpose. Its location is at a commercial hub of city of Jalgaon. Monthly rent therefor is Rs.25=83 ps. Initially, the trial Court had dismissed the suit. In appeal, the respondent/ landlord placed on record a deed of partnership and directed the trial Court to give a finding on the issue namely – “Whether the deed of partnership is a genuine document or a camouflage”. The parties to the suit were

permitted to adduce evidence on the said issue before the trial Court. The trial Court returned the finding holding it to be a camouflage.

7. The Constitution Bench of the Apex Court, in case of Bhagwati Prasad (supra), observed :

“If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely in the issue, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the Court has to consider in dealing with such an objection is : did the parties know that the matter in question was involved in the trial, and did they lead evidence about it ? If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a different matter. To allow one party to rely upon a matter in respect of which the other party did not lead evidence and had had no opportunity to lead evidence, would introduce considerations of prejudice, and in doing justice to one party, the Court cannot do injustice to another.”

8. It was the case of the respondent/ landlord that the applicant – tenant sublet the suit premises. The applicant had countered the same, contending it to be a case of partnership business being run in the suit premises by him with other partners. In the given circumstances, the applicant ought to have placed on record the deed of partnership at first instance itself.

9. On appreciation of the evidence in the case, both the Courts have found that the suit premises have only one entrance door. The board of “Shilpa Traders” displayed on the front portion of the suit premises was only with a view to show the applicant to have been doing his own business from the suit premises. He admitted to have not filed VAT/Sales Tax, Profession tax of Shilpa Traders. Both the Courts have found the applicant to have not been operating his own business from the suit premises. Whatever the goods seen in the suit premises were held to have belonged to the defendant No.6. It has also been held that the applicant has received over Lakhs of rupees clandestinely as a premium. It is true that, some of the observations and findings may appear to be based on surmises and conjectures. But all in

all, findings recorded by both the Courts are consistent with the evidence adduced in the suit. Although the evidence may be susceptible to other inference than one drawn by both the Courts, it could not be said to be a case of perversity in recording the findings by both the Courts.

10. Attention of this Court was specifically adverted to clause (b) and (c) of term of No.11 in the deed of partnership. For better appreciation, the term (11) is reproduced below :-

“11. RIGHT AND RESPONSIBILITIES :

a) That each party shall be just and faithful to the other party in all transaction and things relating to the partnership and at all times render the other party a just and faithful account of the partnership business and also upon every reasonable request furnish a full and correct and explanation thereof to the other party.

b) That the party No.1 has not divested his interest in the premises of House No.92, DANA BAZAR, POLAN PETH, JALGAON.

c) That at all the times the possession of the premises at Jalgaon shall remain with the party No.1. In case the party No. two causes any disturbance in peaceful possession of the party no.1, it shall be lawful for the party No.1 to enter into the premises by breaking open the lock and to take back the possession of the said premises. The party No. two confirms that at no point of time he shall have no right to retain/ claim the possession of the premises.”

11. After having gone through the other terms of the partnership, both the Courts below have concurrently held that, when both the partners have contributed equal capital, the applicant was to receive only a sum of Rs.2000/- per month besides 10% of book profit. It was further agreed that, the applicant shall have no civil and criminal liability in respect of any consequences that may arise on account of the partnership business. He claimed ignorance of yearly turnover of the partnership business. During cross-examination, the applicant was candid enough to have not in the know about accounts of the business. He was also unable to give name of the Bank with which the partnership firm has an Account. Admittedly, the Bank Account of the partnership firm was agreed to be operated by the other partner. The trial Court, therefore, observed that the document of partnership is a mirage.

12. It is true that, if a business of partnership firm is carried on in premises of which one of the partners was the tenant, it would not be a case of subletting (**Helper Girdharbhai Vs. Saiyad Mohmad Mirasaheb Kadri [1987 DGLS (SC) 490]**).

13. In case of **M/s Bharat Sales Ltd. Vs. Life Insurance Corporation of India [AIR 1998 SC 1240]**, it has been observed :-

“Sub-tenancy or subletting comes into existence when the tenant gives up possession of the tenanted accommodation, wholly or in part, and puts another person in exclusive possession thereof. This arrangement comes about obviously under a mutual agreement of understanding between the tenant and the person to whom the possession is so delivered. In this process, the landlord is kept out the scene. Rather, the scene is enacted behind the back of the landlord, concealing the overtacts and transferring possession clandestinely to a person who is an utter stranger to the landlord, in the sense that the landlord had not let out the premises to that person nor had he allowed or consented to his entering into possession over the demised property. It is the actual, physical and exclusive possession of that person, instead of the tenant, which ultimately reveals to the landlord that the tenant to whom the property was let out has put some other person into possession of that property. In such a situation, it would be difficult for the landlord to prove, by direct evidence, the contract or agreement or understanding between the tenant and the sub-tenant. It would also be difficult for the landlord to prove, by direct evidence, that the person to whom the property had been sublet had paid monetary consideration to the tenant. Payment of rent, undoubtedly, is an essential element of lease or sub-lease. It may be paid in cash or in kind or may have been paid or promised to the paid. It may have been paid in lump-sum in advance covering the period for which the premises is let out or sublet or it may have been

paid or promised to be paid periodically. Since payment of rent or monetary consideration may have been made secretly, the law does not require such payment to be proved by affirmative evidence and the court is permitted to draw its own inference upon the facts of the case proved at the trial, including the delivery of exclusive possession to infer that the premises were sublet.”

14. In case of **Celina Coelho Pereira & ors. Vs. Ulhas Mahabaleshwar Kholkar & ors. [AIR 2010 SC 603]**, the Hon’ble Apex Court observed :-

“Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act (2 of 1969), S. 22 – Eviction – Ground of sub-letting – Tenant alleged to have sub-let premises to partnership firm – Pleadings in such case ought not to be construed too technically – Partnership found to be not genuine and was formed to cover up sub-letting – Tenant had no control over premises – Concurrent findings based on evidence by Rent Controller and Administrative Tribunal – cannot be interfered with by High Court under Article 227.”

15. Both the trial Court and the appellate Court as well, on appreciation of the evidence in the suit, have concurrently held it to be a case of sub-letting. After having gone through the evidence in the case, this Court finds the concurrent findings of facts to have been recorded in consonance with the evidence in the suit. There is nothing to

suggest the impugned judgment and decree to have been perverse, although some other inference could have been drawn from the terms embodied in the deed of partnership. The attending circumstances and the evidence in its entirety lead this Court to conclude it to be not a case to make inference with the impugned judgment and decree, in exercise of revisional jurisdiction. The Civil Revision Application, therefore, fails. It is dismissed.

**(R. G. AVACHAT)
JUDGE**

fmp/-