

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

938 SECOND APPEAL NO.76 OF 2019

1) Divisional Controller,
Maharashtra State Road Transport
Corporation, Latur Division,
Ambajogai Road, Latur
Tq. & Dist. Latur
Pin- 413512.

2) Depot Manager,
Maharashtra State Road Transport
Corporation, Udgir Depot,
Tq. Udgir, Dist. Latur.

... **Appellants**
(Orig. Deft Nos. 1 & 2)

VERSUS

Deepak s/o Manikrao Kathare,
Age 50 years, Occ. Business,
R/o. Kathare Niwas, Santoshi Mata
Nagar, Udgir, Tq. Udgir, Dist.
Latur.

... **Respondent**
(Orig. Plaintiff)

...

Advocate for the Appellants : Mr. Reddy Ranjana D.
Advocate for the Respondent : Mr. A.R. Deshmukh h/f Mr. R.B.
Deshmukh.

CORAM : MANGESH S. PATIL, J.

DATE : 10.03.2022.

PER COURT :

This is a second appeal by the original defendant being aggrieved and dissatisfied by the concurrent findings of the courts below holding the respondent-plaintiff entitled to damages of Rs. 1,00,000/- and interest thereon at the rate of 8% p.a. from 26.09.2005.

2. The sum and substance of the pleadings of the parties are to the effect that the respondent was occupying a premises owned by the appellant Corporation on licence. In spite of the licence having expired and was not renewed and in spite of request he continued to hold over the premises. The Corporation is alleged to have taken over possession of the demised premises. According to him, in the process, he sustained a loss to the tune of Rs. 1,50,000/- in the form of loss of the stock that was stored in the demised premises where he was running a shop.

3. The Corporation contested the suit *inter alia* on the ground that in spite of necessary procedure having been followed by it, the respondent was not ready to vacate the premises. Possession of the demised premises was taken over by conducting a panchnama wherein a stock of Rs. 15,000/- was removed. He was called upon to take it away but he failed to do so.

4. Learned advocate Ms. Reddy submits that though the written statement was filed before the trial court, the matter was not diligently conducted on behalf of the appellant Corporation. Neither any cross-examination of the respondent's witnesses was conducted nor was any attempt made to call any officer of the Corporation to lead the evidence. The suit was, therefore, decided *ex parte*. A request was made to the lower appellate court pointing out these facts and to remand the matter but even that request was not accepted. Since the appellant Corporation had no opportunity to lead evidence so that a just decision on the quantum of damages could be had, the second appeal deserves to be admitted and allowed and the suit deserves to be remanded for decision afresh by extending an opportunity to it to contest it.

5. Ms. Reddy would further submit that since the dispute pertains to the rights *inter se* between the appellant Corporation and the respondent - licensee, the Civil Court had no jurisdiction in view of Section 8A of the Maharashtra Government Premises (Eviction) Act, 1956 (hereinafter 'the

Act'). Though the issue was not specifically raised in the written statement or even before the lower appellate court, being a pure question of law, it can be raised even in the second appeal for the first time.

6. Learned advocate Mr. Deshmukh for the respondent submits that there is concurrent finding of fact by the courts below assessing the damages to the tune of Rs. 1,00,000/-. Since it is a second appeal, there is no reason to cause any interference to such concurrent findings of fact. He would submit that evidence was led to assess the damages in the form of testimony of an officer of the bank with which the stock was hypothecated. It is not that there was no evidence and an individual witness was examined and the damages have been assessed. There is no propriety in remanding the matter when the evidence is in the form of testimony of a bank officer coupled with the returns filed by the respondent with the bank demonstrating the worth of the stock when the possession was taken over by the appellant Corporation.

7. I have carefully considered the rival submissions and perused the papers. As far as the question of jurisdiction of the civil court is concerned, reference is made by the learned advocate Reddy to section 8A of the Act which reads thus :

“8A. No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person from any Government premises on any of the grounds specified in section 4 or the recovery of the arrears of rent or the damages payable for use or occupation of such premises.”

Though admittedly, the respondent was occupying the demised premises belonging to the Corporation, the dispute that was raised by him before the civil court was not strictly of the kind, in respect of which this section creates a bar to the jurisdiction of the civil court. It was a suit simplicitor for actual damages sustained by the respondent because of the

Corporation taking over possession of the demised premises behind his back. He has been merely claiming to be compensated for the loss of stock. This is not a dispute which is squarely covered by the categories of disputes in Section 8A. Therefore, there is no substance in the submission of the learned advocate Ms. Reddy that the civil court had no jurisdiction to pass a decree for actual damages.

8. So far as the actual damages and the proof thereof, there is a concurrent finding of fact by the courts below. True it is that the appellant did not avail of the opportunity to contest the suit after it filed the written statement. But then, the damages have not been assessed simply relying upon the oral testimony of the respondent. An officer of a bank with which the stock was hypothecated was also examined as a witness. He was an independent witness and had come with the precise evidence about the respondent having submitted returns regarding stock statement with the bank, which were exhibited at Exhibits 48 to 54. Referring to such a record that the courts below have concluded that there were goods worth Rs. 1,24,332/- lying in the shop when the possession was taken. Since such findings of facts are clearly based on the available evidence and being concurrent findings, this court cannot reassess the material in this second appeal.

9. No substantial question of law arises for the determination in this second appeal. It is dismissed.

(MANGESH S. PATIL, J.)

mkd/-