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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

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**CIVIL REVISION APPLICATION NO.72 OF 2022
WITH
INTERIM APPLICATION NO.1008 OF 2022**

Veera Realtors Pvt Ltd ..Applicant
V/s
Jagdish Lach Mandas Punjabi & Anr. ..Respondents

Mr. Javed A. Khan for the Applicant.
Ms. Panthi Desai i/by M. P. Vashi & Associates for the Respondent No.1.

CORAM : NITIN W. SAMBRE, J.

DATE : 11th AUGUST, 2022

P.C.

1. Heard.
2. The respondent's suit being RAD Suit No.1009 of 2007 was decreed on 10th May, 2013 with following order :-

- “1. Suit is decreed with costs.
2. Plaintiff is hereby declared as a tenant of the suit premises being Flat No.'C' alongwith two garages of building known as 'La Pinta' situated at C.S. No.775, Dadar Naigaum Division, St. Xavier Street, Parel, Mumbai.
3. Defendant No.2 is hereby directed to accept the rent in respect of the suit premises from the plaintiff and to pass rent receipt to that effect.
4. Defendant No.2 is also directed to transfer the rent receipt in the name of the plaintiff.
5. Decree be drawn up accordingly.”

3. The applicant/defendant feeling aggrieved preferred an appeal being Appeal No.33 of 2013 before the Appellate Bench of the Small Causes Court. The appeal came to be dismissed on 3rd January, 2022. As such, this revision.

4. The contentions of the counsel for applicant are, the suit property was under compulsory acquisition, as the local planning authority i.e. Bombay Municipal Corporation has acquired the property. Since the suit property i.e. two garages are already vested in the Corporation, the claim of the respondents seeking declaration about tenancy rights ought not to have been granted, as the claim itself was frustrated by the act of acquisition of the property. His next contentions are, *inter se* litigation between the applicant and the Corporation was not part of the record. However, without their being any permission under Order XLI Rule 27 of CPC, the record from the said litigation between the applicant and the Corporation is relied on for dismissing the appeal. He would further urged that the claim of the respondent is allowed by the Small Causes Court without their being any pleadings or relief claimed.

5. So as to substantiate his contentions, he has invited my attention to the very observations by both the Courts below, the pleadings in the plaint and the fact that the suit property stood vested in the Corporation.

6. Counsel for the respondent would appose the claim.

According to her, having regard to the rival pleadings, the Small Causes Court has framed issues and upon appreciation of the material, has decreed the suit. She would invite my attention to the *inter se* arrangement between the applicant and the Corporation reached at before this Court in parallel proceeding. As such, her claim is that suit property exist, only the location changes. As such, she would urge that the application is liable to be rejected.

7. I have appreciated the said submissions.

8. The respondent/plaintiff filed a suit for declaration in respect of the suit property which consists of two garages situated at CS No.775, Dadar-Naigaum Division, St. Xavier Street, Parel, Mumbai-400 012.

9. The respondent claims that his father was tenant as such by virtue of Section 7 of the Rent Control Act he succeeded to the tenancy rights.

10. Alleging that in the year 2000, the applicant/defendant demanded rent levied by the BMC which fact according to him establishes possession of the respondent over the suit property.

11. Though the rent was sought to be tendered, since the present applicant/landlord has refused to accept the same, suit was brought into action. The present applicant/defendant No.2, who is purchaser of the property though appeared, however, chosen not to file any written

statement.

12. The fact remains that having regard to the rival claims in the suit, the Trial Court framed issues at Exh.8, which reads thus :-

Sr. Nos.	Issues	Findings
1.	Does the plaintiff proves that he is tenant in respect of suit premises ?	...Yes
2.	Whether this Court has jurisdiction to try this suit?	...Yes
3.	Whether the suit is bad for non-joinder of necessary parties?	...Yes
4.	Whether the suit is barred by Law of Limitation?	...No
5.	Whether the plaintiff is entitled to the declaration as prayed for?	...Yes
6.	Whether the plaintiff is entitled to injunction as prayed for?	...Does not survive
7.	Whether the plaintiff is entitled to the other reliefs as claimed?	...Yes
8.	What order and decree?	...As per final order.

13. So as to substantiate the claim, non-applicant/plaintiff examined two witnesses PW-1 – Jagdish Lachmandas Punjabi at Exhibit-12 and PW-2 – Chandu Lachmichand Punjabi at Exh.70.

14. As regards claim of the applicant/defendant is concerned, he has chosen not to adduce any independent evidence but has cross-examined the witness of the non-applicant/plaintiff.

15. The Small Causes Court after having regard to the rival claims has decreed the suit on 10th May, 2013 thereby granting declaration that the non-applicant/ plaintiff is the tenant over the suit property.

16. The fact remains that the two garages which were in possession of the non-applicant were subjected to acquisition was fact within the knowledge of the applicant. The applicant has chosen not to file written statement so as to facilitate him in not bringing to the notice of the Trial Court said fact. Rather the said conduct of the applicant cannot be accepted to his benefit, particularly, when a fact which was within the knowledge of the applicant ought to have been brought on record by him during the pendency of the suit as same is having direct bearing on the issue to be decided.

17. Apart from above, what is required to be noted is when the Appellate Court was informed about acquisition of two garages and the terms on which such acquisition was consented to by the applicant, has rightly considered the same to the detriment of the applicant for dismissal of appeal. The record in relation to the minutes of order 24th December 1996 passed in Writ Petition No.2182 of 1987 in categorical terms speaks of the applicant having undertaken to shift to garages situated at the North-East corner over which non-applicant is having tenancy right.

18. The fact remains that the order in the writ petition may be consent order has to be treated as a public document and such document can be looked into by the Court is a settled position of law. This Court for above can draw support from provision of O. 41 R.27(1)(b) of the Code of Civil Procedure which provides for powers of the Court to permit production of document/evidence.

19. Once the said documents are considered and relied on in accordance with law by the Appellate Court for deciding the appeal of the applicant, no error of law or illegality could be noticed therein.

20. Rather entire conduct of the applicant, *prima-facie* demonstrates that the applicant was not honest to the Court in the matter of disclosure of all the relevant facts. At this stage, he is trying to take undue advantage of the fact being not brought to the notice of the Court.

21. The counsel for the applicant submits that the fact about the acquisition of the property was known to the non-applicant and the suit in that eventuality ought to have been brought into action within a period of three years from the date of such knowledge. It is claimed by counsel for the applicant that the suit claim is barred by limitation, as vide Exh.77, it could be inferred that the property went into acquisition was known to the non-applicant/plaintiff and as such suit, claim is brought in action beyond the period of limitation of three years.

22. If the aforesaid contentions are accepted, what can be noticed is, even if the document at Exh.77 was brought on record, the applicant has not filed any written statement or raised the issue of limitation. The applicant has not contested the suit claim based on the written statement but has only cross-examined witnesses of the plaintiff.

23. The fact that though the counsel for the applicant is justified in claiming that the issue of acquisition of the property was within the knowledge of the non-applicant/plaintiff, however, this Court is required to be sensitive to the very aspect as regards the consent terms executed in the writ petition which the applicant has failed to honour. The applicant has made every attempt to suppress the said fact from both the Courts below. If this Court appreciates the cause of action pleaded in the plaint for the purpose of bringing the suit into action, the Small Causes Court has specifically has dealt with the issue of limitation by framing issue No.4 to that effect. The Small Causes Court, in my opinion, was justified in recording finding that the suit was within limitation based on the circumstances which gave to the cause of action being pleaded in the plaint.

24. As such, it cannot be said that the suit is barred by limitation.

25. In the aforesaid background, particularly, having regard to the undertaking/contents of the order dated 24th December, 1996 passed in the writ petition referred above, in my opinion, no error of

jurisdiction or law could be noticed.

26. The application is such dismissed.

27. In view of disposal of Revision Application, Interim Application also stands disposed of.

(NITIN W. SAMBRE, J.)