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

CIVIL REVISION APPLICATION NO. 209 OF 2022

Ashokkumar Dhanrajji Kothari

Adult Indian inhabitant, age : 64 years,
Residing at Flat No.9, 5th Floor, 35/37
Laxmi Building, JSS Road, Kennedy Bridge,
Opera House, Mumbai - 400 004.

.. Applicant.

(Appellant / Ori. Respondent)

Versus

- 1. Harshad Kevalchand Vora,**
An adult Indian Inhabitant,
Occu. Business, Age : 61 years,
Residing at Kantilal House,
1st Floor, Near Opera House,
Mumbai - 400 004.
- 2. Pradeep Kevalchand Vora,**
An adult Indian Inhabitant,
Occu. Business, Age : 59 years,
Residing at Kantilal House,
1st Floor, Near Opera House,
Mumbai - 400 004.
- 3. Ashok Kevalchand Vora,**
A Non Resident Indian, Occu. Service,
Age - 54 years, Residing at Hillerest Avenue
Manhasset, NY 11030, USA.
- 4. Gautam Kevalchand Vora,**
A Non Resident Indian, Occu. Service,
Age - 51 years, Residing at 3120,
CominoDela Sierra - NE, Albuquerque,
New Maxico 87111, USA.
- 5. Shrenik Sudhir Vora,**
An adult Indian Inhabitant, Occu. Business
Age - 37 years, Residing at Kantilal House,
1st Floor, Near Opera House,
Mumbai - 400 004.
- 6. Ms. Shreedevi Sudhir Vora,**

An adult Indian Inhabitant, Occu. Service,
Age - 32 years, Residing at 1309,
51st Street North Bergen,
New Zerzy - 07047, USA.

7. **Ms. Shreelekha D Mody,**
An adult Indian Inhabitant, Occu. Service,
Age - 41 years, Residing at 4016,
Wilson Lane Concord,
California 94521, USA.

.. Respondents.

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- Mr. Ajay Kumar Singh, Advocate a/w. Mr. Piyush A. Singh, Advocate for Applicant.
 - Mr. Simil Purohit, Advocate a/w. Ms. Puja Tukrel, Advocate i/by Raj Baid, Advocate for the Respondents.
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CORAM : MILIND N. JADHAV, J.
RESERVED ON : MAY 24, 2022.
PRONOUNCED ON : OCTOBER 06, 2022.

JUDGMENT :

1. By the present Civil Revision Application, Applicant (original Defendant-Tenant) has challenged legality of judgment and order dated 27.09.2021 passed by learned Additional Chief Judge and Ad-hoc District Judge of Court of Small Causes, (Appellate Bench), Mumbai in Appeal No.78 of 2015.

2. Applicant is the original Defendant (for short “**tenant**”). Respondent Nos.1 to 7 are original Plaintiffs (for short “**landlord**”). They shall be referred to as tenant and landlord for convenience. Suit property is Flat No.9 situated on 5th Floor of Laxmi Building, 35/37, Kennedy Bridge, Mumbai 400 004 (for short “**the suit premises**”).

3. On 07.11.2001, landlord of suit premises instituted R.A.E. & R. Suit No.1030/1789 of 2001 in the Court of Small Causes at Mumbai against tenant seeking following reliefs:-

- "(a) that the defendant be ordered and decreed to hand over to the plaintiffs vacant and peaceful possession of the suit premises namely flat No.9 on the 5th floor of the building known as Laxmi Building, 35/37, Kennedy Bridge, Mumbai - 400 004;
- (b) the defendant to ordered and directed by an order and permanent injunction of this Hon'ble Court to forthwith remove himself, his family members, servants and his articles from the said setback portion of the 5th floor which is overlooking the kitchen of the suit premises and which has been enclosed by the defendant by putting up an iron Grill and covering the same on the top by tin shed, as detailed in paragraph No.3 above;
- (c) the defendant be ordered and decreed to pay mense profits @ 431.05 per month to the plaintiffs from the date of filing of the suit till such time and period the defendants continues in unauthorised and illegal occupation of the suit premises and every part thereof and for such other and further time that the plaintiffs are illegally prevented from taking and recovery vacant possession of the suit premises."

3.1. Suit was instituted for seeking eviction of tenant from suit premises on the following grounds:-

- (a) that tenant constructed illegally and unauthorisedly construction of permanent nature and carried out additions and alterations of permanent nature in the suit premises without obtaining prior written permission of landlord;
- (b) that tenant committed several acts of waste and damage to landlord's property; and

(c) that tenant caused nuisance and annoyance to the neighbouring tenants of suit premises and owner/occupiers of neighboring buildings.

3.2. Landlord contended that tenant illegally and unauthorisedly constructed permanent structure in suit premises and carried out additions and alterations of permanent nature without obtaining prior written permission. It was further contended that tenant committed several acts of waste and damage to the building by illegally and unauthorisedly enclosing the open to sky (eastern side) setback portion on the 5th floor and permanently damaging the gutter pipeline and waste water passing through the said setback portion causing nuisance and seepage thereby damaging walls of the 3rd and 4th floor of the building and such act of tenant caused nuisance and annoyance to other tenants in the building as well as occupiers of neighboring buildings. By Notice dated 20.01.2001 tenant was directed to restore the suit premises in its original condition by removing all illegal works, but tenant did not adhere to the notice. Hence on 31.05.2001, landlord through Advocate's notice terminated tenancy of tenant and called upon him to hand over vacant and peaceful possession of suit premises.

3.3. Trial Court, by order dated 20.01.2007 in Interim Notice No.663/2006, allowed landlord to amend the plaint and add

additional grounds for eviction as under:-

- (a) that tenant enclosed the entire setback area of terrace i.e. the setback portion on 5th floor abutting the kitchen by M.S. Grills having top of G.I. Sheets which covered the common inlet pipeline for fresh water going to the over head water storage tank and making it accessible only through the kitchen window of the said premises; that due to such inaccessibility it was impossible to repair the inlet water pipeline in the event of any repairs required;
- (b) that a separate W.C. was constructed in the bathroom of the said premises and a separate outlet line was connected to the main sewerage line;
- (c) that a separate water connection was taken on terrace and outlet pipes were provided for washing machine on the terrace and outline pipe of the washing machine was connected to the rain water pipe for drainage;
- (d) that in the existing bedroom a T-shaped partition wall was constructed with marble slabs panel and

mortar placed directly on the floor slab and put up vertically upto ceiling height, so as to subdivide the bed room into two independent bedrooms of permanent nature;

- (e) that most of the inside walls of rooms in the suit premises were covered with vertical marble slabs loading the existing floor slab and substantially endangering the life of the building.

3.4. Defendant filed written statement and contended that he did not carry out any unauthorised construction, additions or alterations in suit premises without obtaining consent of landlord. It was contended that suit premises was let out to him in the year 1995; that the open setback area was open to sky and in order to protect his children from meeting with an accident, he put up the iron grill with permission of landlord; further the iron grill also prevented entry of any unauthorised person from the terrace into the suit premises. He contended that iron grill was a temporary structure and easily removable; that the tin shade over the iron grill was put up with permission of landlord and it was a temporary structure and easily removable; that allegation of leakage and seepage of water from the pipelines was unfounded since the building in which suit premises was situated was a pre 1940 structure, constructed in the year 1938 and

landlord neglected to maintain the pipes leading to severe leakage, which were in fact carried out by him at his cost. Tenant further contended that he received a reply dated 06.12.1995 from Mr. Sudhir Vora, landlord granting him permission to carry out such repairs and renovation as per the plan enclosed by him alongwith his letter dated 26.11.1995 seeking permission.

3.5. Suit was decreed by judgment and order dated 19.12.2014 after trial. Appellant bench of the Small Causes Court by its judgment and order dated 27.09.2021 upheld the judgment and order of the Trial Court. Present CRA is filed challenging the judgment and order dated 27.09.2021.

3.6. On 23.05.2022, this Court was passed the following order:-

“1. Heard learned counsel for the respective parties.

2. Perused the order dated 10.05.2022. Mr. Singh, learned counsel appearing for the Revision Applicant submits that he is not prepare today and requires time to take instructions from the Applicant on certain documents and submissions in the present case.

3. Though the matter was mentioned on 10.05.2022 and at the joint request of both the learned counsels, it was placed today for hearing and final disposal at the stage of admission, Mr. Singh requests for accommodation. He submits that he shall be ready with the submissions as well as instructions in the present matter by tomorrow.

*4. On the request of Mr. Singh, the matter is adjourned to tomorrow i.e. **24th May, 2022**. To be placed for ‘hearing and final disposal’ at the bottom of the board.*

5. The Respondents have tendered a compilation of documents. The same is taken on record. Copy of this compilation of the documents is handed over to Mr. Singh. Mr. Singh, learned counsel for the Revision Applicant submits that he shall not pray for any adjournment tomorrow.”

4. I have heard Mr. Singh, learned Advocate for the tenant (Revisional Applicant) and Mr. Purohit for the landlord (Respondents) and with their able assistance perused the record of the case, pleadings of parties since inception i.e. filing of suit and evidence alongwith the two judgments/orders.

5. It is seen that the letter dated 26.11.1995 written by tenant to landlord seeking permission to carry out renovation in the suit premises forms the substratum of the present dispute. Minute perusal of the letter reveals that tenant sought permission of landlord to carry out renovation of the suit premises seeking permission viz; (i) to change tiling; (ii) to change wooden windows with same size aluminum sliding windows; (iii) to remove wooden door frames and put up marble frame alongwith marble tiling work; (iv) to do plaster job and painting. In the said letter tenant has given undertaking stating that in the above works there will not be any structural alterations or additions requiring BMC permission; that he shall not enclose the balcony; that he shall not make any opening for window or air conditioner on the north side wall; and he shall return and deposit the old wooden door frames and windows removed by him to the landlord. It is pertinent to note that in the said letter tenant appointed Interior Decorator Mr. Sunil R. Mestry of M/s. Laxmi Art to carry out the renovation. Most pertinently annexure to the said letter

is a detailed plan dated 26.11.1995 given by the tenant which shows the nature of the above works/renovation to be carried out by him. This letter alongwith plan is marked as Exh.34 collectively.

6. In the above context the substantive evidence of the tenant i.e. Ashokkumar Dhanrajji Kothari himself recorded before the Trial Court becomes most relevant. Affidavit of examination-in-chief under Order 18 Rule 4 of Code of Civil Procedure, 1908 is filed by tenant on 03.07.2012 before Trial Court. Tenant has been extensively cross-examined on the subject matter/cause of action namely Exh.34 and its enclosure i.e. the plan enclosed therewith. Tenant in his cross-examination (conducted on 12.02.2013) has categorically deposed as under:-

“..... The suit premises i.e. flat No.9 is self contained flat. When the tenancy was created this flat was consisting of a hall, large bedroom and kitchen. There was also a bathroom and toilet. It was different. In the year 1995 with the permission of landlord I have made together these toilets and bathroom into one unit. The Today's position is these are different units. Both these units have bathroom and toilet. This is a position from 1996.....”

6.1. Tenant in his further cross-examination (conducted on 30.01.2014) has categorically deposed as under:-

“..... 3..... when I have taken the suit premises

there was only one bed room in it. At present there are two bed rooms. I have converted one bedroom into two bedrooms by erecting wall. That wall is made from marble. That wall is from the floor upto ceiling. I do not know how much time was required for constructing the said wall. I also made two separate doors for each bedrooms. There must be support steel to the marble wall. Initially, the wall was made from brick masonry and thereafter, marble was fixed. My intention was to make use of second bedroom permanently. According to me, for erecting wall there was no digging on the floor.....”

7. Tenant in his cross-examination (conducted on 03.02.2014) has further categorically deposed as under:-

“..... 2..... I have not shown the flat below the suit premises to any architect. It is true that at the time of taking of the suit premises, there was only one toilet cum bathroom. I have divided toilet cum bathroom in two separate units. I do not know as to whether there are no beams below walls as mentioned para No.11 as examination-in-chief. My brother got done the work of construction in the suit premises.....”

8. In the background of the aforementioned substantive evidence given by Tenant before the Trial Court it is the contention of tenant that the works of erecting the partition brick masonry wall clad with marble and the enclosure of the setback portion abutting

the kitchen on terrace by iron grills enclosure were both temporary structures which could be removed without damaging the suit premises and that these works amounted to “tenantable repairs”. The same contention is repeated and reiterated before me even today in the arguments advanced by Mr. Singh. On the contrary, Mr. Singh, has further contended that there was already an existing partition between the two bedrooms which was merely cladded with marble slab by tenant and this did not amount to carrying out any permanent repairs in the suit premises. However, there is no evidence to this effect shown to me to substantiate this submission of Mr. Singh. Relevant evidence which goes to the root of the case is reproduced hereinabove.

9. As seen, all aforementioned arguments and submissions of tenant completely pale into insignificance and are rendered infructuous in view of his own substantive evidence recorded by Trial Court and as alluded to hereinabove. Learned Trial Court appreciated the evidence and returned the finding that tenant erected the permanent structure in the suit premises without consent of landlord. Further it is tenant’s own deposition and evidence that he carried out construction of erecting the brick masonry wall and cladded the same with marble from floor to ceiling and this construction as seen would naturally change the structure of the suit premises and is of a permanent nature and would naturally increase the load on the suit

building which is admittedly more than 84 years old today. The most important aspect which deserves to be noted in this respect is the fact that the tenant did not adhere to the works contained in his own letter dated 26.11.1995 (Exh.34) seeking permission which was specifically sought for renovation work and interior work as stated therein. In the deposition of tenant it has also come on record that he did not take advice from any architect whatsoever in respect of the substantive permanent alterations carried out him.

10. Section 16(1)(a) and 16(1)(b) of the Maharashtra Rent Control Act, 1999 (for short “**the said Act**”) reads thus:-

“16. When landlord may recover possession:

(1) Notwithstanding anything contained in this Act but subject to the provisions of section 25, a landlord shall be entitled to recover possession of any premises if the court is satisfied -

(a) that the tenant has committed any act contrary to the provisions of clause (o) of section 108 of the Transfer of Property Act, 1882; (IV of 1882)

Explanation: For the purposes of this clause, replacing of tiles or closing of balcony of the premises shall not be regarded as an act of a causing damage to the building or destructive or permanently injurious thereto; or

(b) that the tenant has, without the landlord's consent given in writing, erected on the premises any permanent structure;

Explanation: For the purposes of this clause, the expression "permanent structure" does not include the carrying out of any work with the permission, wherever necessary, of the municipal authority, for providing a wooden partition, standing cooking platform in kitchen, door, lattice work or opening of a window necessary for ventilation, a false ceiling, installation of air-conditioner, an exhaust outlet or a smoke chimney.”

11. In this aforesaid background, the learned Appellate Court while considering the dispute between parties has categorically come to the conclusion that the landlord has proved that the tenant has carried out construction of permanent nature in the suit premises which attracted the provisions of Section 16(1)(b) of the said Act. Section 16(1)(b) contemplates that landlord shall be able to recover possession of any suit premises if the Court is satisfied that the tenant has erected any permanent structure without consent of landlord. The explanation to this provision provides that for the purposes of this clause, permanent structure does not include the carrying out of any work with the permission wherever necessary of the Municipal Authority for providing a wooden partition, standing cooking platform in kitchen, door, lattice work or opening of a window necessary for ventilation, a false ceiling, installation of air conditioners and exhaust outlet for smoke chimney. What is pertinent to note is that in the present case the tenant has admitted to carrying out construction of brick masonry wall in the suit premises cladded with marble from the floor slab to the ceiling which necessarily and substantially would endanger the life of the suit structure/building as the said wall is admittedly not a load bearing structure. Learned Appellate Court has appreciated the evidence of tenant as alluded to hereinabove and after considering the same agreed with the opinion of the learned Trial

Court on the issue of construction of partition wall and conversion of one bed room into two bedrooms and conversion of two independent bathroom cum toilet units as amounting to raising of structure/erection of permanent nature as contemplated under section 16(1)(b) of the said Act. This finding returned by the learned Appellate Court upholding the Trial Court judgment and order and findings goes to the root of the matter. In view of the deposition of the tenant himself and on considering the Appellate Court's judgment and order dated 27.09.2021, I do not find any reason whatsoever to interfere or deviate from the findings arrived at by the Trial and Appellate Courts. Trial Court and Appellate Court, both have considered the entire material and evidence on record including deposition of the tenant himself and have correctly arrived at their findings in their respective judgment and order. The said findings deserve to be upheld and there is no infirmity whatsoever in the judgment and order passed by the learned Appellate Court as they have dealt with all ingredients of the applicable statutory provision of law.

12. In this context, I may usefully refer to the decision of the Supreme Court in the case of *Venkatlal Vs. Bright Brothers Pvt. Ltd.*¹; which has dealt with the powers of the High Court under article 227 of the Constitution of India in respect of a finding returned by the appropriate/relevant Court in respect of construction of permanent

1 1987 SC 1939

structure by a tenant on demise of premises in violation of the provisions of the Rent Control Act and the Transfer of Property Act. I may only refer to the principle etched out in this regard. The Supreme Court has held that there are numerous authorities dealing with how the question whether the structure is a permanent structure or not should be judged. The Supreme Court stated that it is not necessary to deal with all this and one must look to the nature of the structure, the purpose for which it was intended and take a whole perspective as to how it would affect the enjoyment, the durability of the building, etc. and other relevant factors and come to a conclusion. Applying the principle laid down by the Supreme Court to the facts and circumstances of the present case, I hold that the concurrent findings returned by the learned Trial Court and the Appellate Court on the examination of the nature of structure, the nature of duration of structure, the substantive evidence given by the tenant himself which is referred to and alluded to hereinabove, it cannot be said that the said findings are perverse and deserve any interference by this Court under Article 227 of the Constitution of India. The views taken by the Trial Court and the Appellate Bench of the Small Causes Court after considering and marshaling of the evidence on record are possible views arrived at after a reasoned order upon appreciation of evidence. They deserve to be upheld.

13. In view of the above discussion and findings, I do not find any substance in the submissions and arguments of the tenant (Revisional Applicant).

14. The Civil Revision Application stands accordingly dismissed.

[MILIND N. JADHAV, J.]

15. After the judgment is pronounced, Mr. Singh, learned Advocate for Revisional Applicant has prayed for stay of the present judgment and order to enable the Revisional Applicant to approach the Supreme Court.

Though the same is opposed by Ms. Puja Tukrel, learned Advocate for Respondents, I am inclined to grant time to the Revisional Applicant as prayed for. In view thereof, the present judgment and order shall remain stayed for a further period of eight weeks from today.

16. Mr. Singh, on taking instructions submits that Revisional Applicant shall not create any third party rights in the suit premises. This statement is accepted as an undertaking given to the Court.

[MILIND N. JADHAV, J.]

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