

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

CIVIL REVISION APPLICATION NO.212 OF 2016

Sajjadi Kharim & ors	.. Applicants
Versus	
The Board of Trustee of the Port of Bombay	..Respondent

Mr. R. M. Haridas for the Applicants.
Mr. Dhruv Gandhi a/w Mrs. N D. Motiwalla i/b. Motiwalla & Co. for the Respondent.

CORAM : NITIN W. SAMBRE, J.

DATED : 18th OCTOBER, 2022

P.C.:

1. The applicants / defendants have invoked the revisional jurisdiction of this Court questioning the judgment and decree delivered in L.E. & C. Suit No.537/562 of 1986 whereby the eviction of the applicants was ordered vide judgment and order dated 26th July, 2006 which was confirmed in Appeal No.518 of 2006 delivered on 20th January, 2016 by the Appellate Bench of the Small Causes Court at Bombay.
2. The case of the applicants / defendants is that the applicants occupying around 500 square meters of premises owned by the respondent / Trust. According to them, they were served with the notice of arrears which was to the tune of Rs.23,424.50 for having defaulted in paying the said rent for a period from 1st June, 1986 to

30th June, 1986. It is claimed that in the suit proceedings, the arrears were based on the unreasonable demand of enhanced rent.

3. While questioning both the orders, Mr. Haridas, learned counsel appearing for the applicants-tenants would urge that notice dated 26th August, 1985 which is at "Exhibit D" is bad in law, as the same was issued without any resolution of the respondent - Trust. His further contentions are that the respondent - plaintiff has enhanced the rent unilaterally without there being any lawful basis for the same. Drawing support from the judgment of Apex Court in the matter of **Dwarkadas Marfatia and Sons vs. Board of Trustees of The Port of Bombay**¹, he would urge that the respondent - plaintiff being instrumental in the said proceeding is required to conduct themselves reasonably. He would further urge that long standing possession of the applicants which is from more than 50 years, and the fact that the enhancement is without there being any legal basis, the notice has to be declared bad in law. He would further urge that the respondent cannot leave the applicants high and dry particularly when they have ample space available there and as such the applicants would have been accommodated in the alternate place. He would further urge that the issue is also covered by the judgment of this Court in the matter of **Lockwood Industrial and**

1 1989 AIR (SC) 1642

Transport Services, Bombay vs. Victoria Timber Supplying Company, Bombay². Drawing support from the observations made in paragraph 15, the learned counsel would urge that Article 14 equally applies to the non-applicant and that being so it was the lease that was implied, the non-applicants was to be conducted reasonably and in transparent manner.

4. While countering the aforesaid submission, the learned counsel for the respondent-plaintiff would urge that the notice dated 26th August, 1985, issued under Section 106 of the Transfer of Property Act, 1882 at “Exhibit D” was duly proved. According to him, the applicants have defaulted in making the payment of rent for a period of December 1982 and subsequent thereto from 1st January, 1986 to 30th June, 1986. He would further urge that the total outstanding of arrears as against the notice being at “Exhibit D” was to the tune of Rs.23,424.50/- so that is around Rs.4000/- per month for an area of 500 sq. ft. in the city of Bombay. His further contentions are that it is nowhere provided in the provisions under Section 106 of the Transfer of Property Act, that the notice must contained the reasons. According to him, already the notice mentions that the eviction of the applicants was sought on the ground of failure to clear arrears of rent. He would further urge that neither any ulterior motive was

2 2010 (1) Mh.L.J.

addressed before the Court below and for the first time, the applicants raised the said issue before this Court. Drawing support from the Judgment of the Apex Court in the matter of **Jiwan Dass vs. Life Insurance Corporation of India and anr**³, more particularly paragraph 4, he would try to substantiate the aforesaid contentions.

5. The last submission is that the present revision application which is against the concurrent findings, does not contained any error of jurisdiction, as such the Civil Revision Application is liable to be dismissed.

6. I have appreciated the said submission.

7. Accordingly, the Civil Revision Application is dismissed.

8. 12 weeks time granted.

(NITIN W. SAMBRE, J.)

³ 1994 Supp (3) Supreme Court Cases 694