

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

CIVIL REVISION APPLICATION NO.246 OF 2022

Mr. Dilip Anant Chawan

..Applicant

Versus

Mrs. Gool Rusi Vatcha and Anr.

..Respondents

Mr. Pradip J. Thorat i/by Aditi S. Naikare, for the Applicant.
Mr. Atul Damle, Senior Advocate a/w Dharam Sharma &
Mrs. Uma Sharma i/by Dharam & Co., for the Respondent
No.1.

CORAM : NITIN W. SAMBRE, J.

DATE : 16th JUNE, 2022

P.C.

1. Heard.

2. The applicant/defendant No.2 to RAE Suit No.261/447 of 2009 suffered a decree for eviction passed under the provisions of Maharashtra Rent Control Act, 1999 (herein-after referred as "Rent Act" for the sake of brevity) on 3rd May, 2016. Feeling aggrieved, applicant preferred appeal being Appeal No.339 of 2016, thereby questioning the aforesaid decree. The said appeal came to be dismissed vide order dated 22nd March, 2022. As such, this revision application.

3. The facts necessary for deciding the present revision application are as under :-

Parties hereto shall be referred to having regard to their status in the suit i.e. the applicant as defendant No.2 and respondent No.1 as plaintiff.

The applicant/defendant No.2 claimed to be in permissive possession of the suit property through the defendant No.1 who is respondent No.2 to the present petition.

4. Defendant No.1 claimed to have expired on 31st December, 1973 i.e. prior to the initiation of the suit in question.

5. The suit came to be initiated seeking eviction of the defendant No.2 alleging that he is unlawful sublettee of defendant No.1, bonafide requirement of the original plaintiff and acquisition of alternate accommodation by the defendant No.2.

6. In the said suit, defendant No.1/original tenant has failed to appear, whereas the petitioner/defendant No.2 has chosen to file his written statement and has examined himself as DW-1 at Exh.40. The original plaintiff examined PW-1 as his witness at Exh.22.

7. Having regard to the pleadings, Trial Court framed issues at Exh.15 which reads as under :-

ISSUES	FINDINGS
1. Whether the suit is bad for mis-joinder or non-joinder of necessary parties ?	..In negative
2. Does the Plaintiff prove that Defendant No.1 inducted Defendant No.2 in the suit premises unlawfully, illegally and without consent or permission of Plaintiff ?	..In affirmative
3. Does the Plaintiff prove that Defendant No.1 left the suit premises due to acquiring suitable accommodation ?	..Does not survive
4. Does the Plaintiff prove that she requires the suit premises reasonably and bonafide to accommodate the staff of her theater New Shirin ?	..In negative
5. Does the Plaintiff prove that Defendant has carried out unauthorized additions and alterations of permanent nature in the suit premises ?	..In negative
6. Whether the Plaintiff is entitled to the decree of eviction ?	..In affirmative
7. Whether the Plaintiff is entitled to the decree of mandatory permanent injunction ?	..Does not survive
8. Whether the Defendant No.2 prove that there is no relationship of landlord and tenant in between Plaintiff and Defendant No.2 ?	..Does not survive
9. Does the Plaintiff prove that Defendant No.1 is profiteering by sub-letting the suit premises to Defendant No.2 ?	..In negative
10. What order, Decree and costs ?	..Suit is decreed but no order as to costs

8. Since the issues were answered against the applicant, suit came to be decreed, thereby directing the applicant to vacate and hand over vacant and peaceful possession of the suit premises within three months. After the appeal of the applicant was dismissed against the aforesaid judgment, I am informed that the respondent/decree holder has taken out proceedings for execution.

9. As such, while attacking both these judgments which are impugned in the revision, the claim put forth by Mr. Pradip Thorat is, even if the original tenant is party/defendant No.1 to the suit, having regard to the fact about the death of defendant No.1 and the failure on the part of the respondent/plaintiff to bring the legal heirs of such party on record, the decree is unexecutable, as same becomes nullity. So as to substantiate aforesaid contentions, Mr. Pradip Thorat, learned counsel has drawn support from the judgment of this Court in the matter of **Indiana International Ltd. Vs. Santana Miguel Fernandes** reported in **2007 0 Supreme(Bom) 579**. The next contention of the applicant/defendant No.2 is provisions of Section 16(1) of the Rent Act contemplates

satisfaction of the Court before passing of the decree. As the satisfaction as regards bonafide need has to be based on the appreciation of pleadings, documentary evidence and the oral evidence on record, once the plaintiff/respondent No.1 has failed to discharge his preliminary burden of proving the case that the defendant No.1 was the tenant and the defendant No.2 sublettee, the burden ought not to have been shifted on the applicant/defendant No.2 to prove the fact that he was rightly inducted as tenant of the defendant No.1 being member of extended family. It is urged that, in absence of the service on defendant No.1/original tenant, the plaintiff has failed to establish the ground of sub-tenancy/sublettee against the defendant No.1 and that being so, the impugned decree is not sustainable.

10. Mr. Atul Damle, learned senior counsel for the respondent No.1 while opposing the aforesaid prayer would urge that the fact that the defendant No.1 i.e. tenant has expired was never within the knowledge of the original

plaintiff, as the suit summons was issued on the address of the suit premises and the same was within the knowledge of the present applicant/defendant No.2. The applicant/defendant No.2 has intentionally avoided to give details as regards whereabouts of defendant No.1, so also about his legal heirs and also the fact as regards death of defendant No.1. As such, according to him, on one hand the applicant/defendant No.2 submits that whereabouts of legal heirs of defendant No.1 i.e. original tenant are not known to him and on the other hand he is claiming to be family member of defendant No.1 which should prompt this Court to infer that applicant is trying to take disadvantage of the said situation. In this background, he would urge that the applicant is trying to take disadvantage of his own default and suppression. In addition, Mr. Atul Damle would urge that in the aforesaid background, initial burden was not required to be discharged by the respondent/plaintiff, as the applicant/defendant No.2 has admitted that he has succeeded to the tenancy through legal heirs of original defendant and as such, has given admission about his

status as sub-tenancy.

11. I have appreciated the rival submissions.

12. The fact remains that amongst other grounds on which eviction of the applicant was sought is sublettee. If we appreciate the claim of the applicant as put forth above, from the defence raised by the applicant in his written statement, it is noted that he has given admission in categorical terms that the tenancy of the suit premises was surrendered to him by the legal heirs of the original licensee. Such admission rightly so pointed out by Mr. Atul Damle amounts to only inference that the applicant/sub-tenant has admitted his status as that of the sub-tenant of original tenant i.e. defendant No.1.

13. In the aforesaid background, if we appreciate the very conduct of the applicant *qua* the service of suit summons, what is noticed is, it was incumbent on the part of the applicant to disclose about the details of legal heirs of defendant No.1, particularly in the backdrop of his

admission that he is extended family member of the deceased defendant No.1. Such requirement has necessitated during the pendency of the suit, as at the time of service of suit summons on defendant No.1 during the course of visit of bailiff, it was noticed that the present applicant informed that the defendant No.1 has left the premises and his whereabouts was not known. On the other hand, applicant has come out with the case that the legal heirs of the defendant No.1 have surrendered tenancy in his favour and as such, he is in possession of the suit property.

14. In the aforesaid background, if we appreciate the observations of both the Courts below, what can be noticed is the circumstances were created by the applicant/defendant No.2 so as to frustrate the claim of the original plaintiff *qua* drawing of the execution of decree against the defendant No.1/original defendant/tenant so as to facilitate him to raise such ground i.e. absence of service on the defendant No.1 and decree becomes nullity at later stage.

As such, the applicant cannot be permitted to take undue advantage of his own defaults.

15. Apart from above, as has been observed hereinbefore, considering the nature of admission given by the applicant in his written statement that he has received possession of the suit premises from the legal heirs of the defendant No.1, it was for the present applicant/defendant No.2 to establish that he is not sub-tenant, but an extended family member of the defendant No.1, which he has failed to. No details as to how he became part of family of legal heirs of defendant No.1 are brought on record.

16. In the aforesaid background, the claim put forth that in absence of the service on the defendant No.1/original tenant, the decree becomes nullity, cannot be accepted. Rather the admissions given by the defendant No.2 have rightly so prompted to both the Courts below to pass decree for eviction. In this background, support drawn from the judgment of *Indiana International (supra)* BGP.

will be hardly significance of any support.

17. In the aforesaid background, having regard to the concurrent findings recorded by both the Courts below and in the light of observations made herein-above, I hardly see any error or jurisdiction or failure to exercise jurisdiction by both the Courts below. That being so, the revision fails, dismissed.

18. As prayed, the decree shall not be executed against the applicant for a period of four weeks, provided the applicant shall furnish an undertaking within one week from today that applicant shall not damage the suit premises or create any third party or take such steps so as to frustrate the decree in any manner whatsoever.

[NITIN W. SAMBRE, J.]