

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

CIVIL REVISION APPLICATION NO.258 OF 2022

Shri. Shiv Shankar Rambaksh Gupta ..Applicant

Versus

Shri. Gulabhai Durlabhai Rathod ..Respondent

Mr. Chaitanya Chavan i/by Karan S. Thorat, for the Applicant.

Ms. Chaitrali Deshmukh i/by Trisha Bhattacharya - Sawant, for the Respondent.

CORAM : NITIN W. SAMBRE, J.

DATE : 5th AUGUST, 2022

P.C.

1. Heard.

2. The respondent/plaintiff to the present revision application initiated RAE & R Suit No.267/664 of 2005 on 15th September, 2005 seeking eviction of the present applicant/tenant alleging that there was leave and licence agreement dated 1st July, 1996 which was subsequently converted into monthly tenancy from 1st August, 2000 at monthly rent of Rs.500/-.

3. It is alleged by the respondent/plaintiff that the present applicant/tenant was in arrears of rent from 1st April, 2002 on words. As such, demand notice was served on 4th December, 2004.

4. It is also claimed by the respondent/plaintiff that the suit premises are required for bonafide use.

5. The aforesaid claim was contested by the applicant/tenant vide written statement Exhibit-9.

6. Amongst other, the defence raised by the present applicant was that he has purchased the suit premises from the plaintiff on 26th May, 1996 for consideration of Rs.70,000/-. As such, it is claimed that there is absence of landlord-tenant relationship and the suit is not maintainable.

7. Considering the relief claimed, the Trial Court framed issues at Exh.-10, which are reproduced as under:-

Sr. Nos.	Issues	Findings
1.	Whether the plaintiff proved that defendant is his tenant at the suit premises ?	In the affirmative.
2.	Whether he further proved that defendant is not ready and willing to pay the rent and permitted increase, as alleged ?	In the affirmative.
3.	Whether he further proved service of demand notice on the defendant ?	In the affirmative.
4.	Whether suit premises are reasonably and bona fide required by the plaintiff for his	In the affirmative.

	own use and occupation ?	
5.	To whom greater hardship would be caused by passing decree for eviction than by refusing to pass it ?	To the plaintiff, if decree is refused to be passed.
6.	Whether the plaintiff proved that defendant is in arrears of rent, as alleged ?	In the affirmative.
7.	Whether this Court has jurisdiction to try and entertain the suit ?	In the affirmative.
8.	Whether the suit premises is described properly ?	In the affirmative.
9.	Is the plaintiff entitled for relief of recovery of possession ?	In the affirmative.
10.	Is he entitled for relief of recovery of arrears of rent, as claimed ?	In the affirmative.
11.	Is he entitled for mesne profits, as claimed ?	In the affirmative.
12.	What order and decree ?	As per final order.

8. Amongst other, the issues decided by the Trial Court included whether this Court has jurisdiction to try and entertain the suit. The said issue appears to have been answered against the present applicant on the ground that the applicant has failed to demonstrate that the said property is covered to be a slum under Section 4 of the Slums Act.

9. As a sequel of above, the suit came to be decreed on 18th September, 2014. The appeal preferred by

the present applicant was also dismissed on 8th April, 2022. As such, this Revision.

10. Counsel for the applicant while trying to make out a case for causing interference in revisional jurisdiction would urge that the fact that the suit premises are covered under the Slums Act and as such, pursuant to the provisions of Section 22 of the said Act, suit itself is barred by jurisdiction was very much canvassed. So as to substantiate his claim that the suit is not maintainable, he has invited my attention to the evidence of DW-2 Mr. Sanjay Nalawade, a public servant from the office of Deputy Collector, Slums. It has come in the testimony of the said witness that CTS No.252, 252/1 to 24 are declared as slum in the year 1983.

11. The said oral evidence was not substantiated by any documentary evidence, much less notification under Section 4 of the Slums Act. Counsel for the applicant would invite my attention to the notification issued by the State Government on 10th November, 1977, wherein it is claimed that the suit property was notified as slum. He would urge that the said issue was confirmed from the fact that the name of the applicant is already included in the Annexure-II i.e. qualified slum dweller who is occupying or encroached on the property prior to 2000. As such, according to him, both the orders impugned are without

jurisdiction and as such, warrant interference. Additional submission is made that the document in relation to inclusion of the applicant in Annexure-II by the Slum Authority, which fortifies the claim of the applicant be permitted to be brought on record on 6th January, 2018.

12. While countering the aforesaid submissions, Ms. Chaitrali Deshmukh, counsel appearing for the respondent/plaintiff would oppose the prayer. According to her, once the applicant has come out with a defence that the suit premises is covered by the Slums Act, it was for him to discharge the said burden, which he has failed to. As such, she has sought dismissal of the revision on the ground that already possession warrant is issued.

13. I have appreciated the said submissions.

14. No doubt, the applicant/tenant has specifically come out with a plea that the suit proceedings are not maintainable in view of the provisions of the Slums Act. In appeal he has raised a plea that he has purchased the suit premises. It appears that vide issue No.7, Trial Court has considered claim of the applicant about non-maintainability of the suit being the property covered by the provisions of the Slums Act. As such, the fact that there was plea on the part of the applicant that the suit property is covered under the Slums Act was very much canvassed and within

the knowledge of the non-applicant/landlord.

15. Once the applicant has come out with a case that the suit property is covered by the Slums Act and as such, suit is not maintainable, it was for the applicant to discharge said burden, which the defendant before the Trial Court by examining DW-2 Sanjay Nalawade from the Office of Deputy Commissioner has tried to discharge. However, but for his oral testimony neither the copy of notification nor any other documentary evidence is brought on record to substantiate the said claim. At this stage, i.e. at revisional stage, applicant has come out with a photocopy of notification saying that on 28th October, 1977, the suit property was already notified as slum, as according to him, hutments/premises which are occupied by the applicant are within CTS No.252, 252/1 to 24. The fact remains that in the deposition of DW-2 Mr. Sanjay Nalawade what was brought on record is, the property of the applicant is covered under the Slums Act being part of CTS No.251/1 to 24 whereas the notification speaks of CTS No.252/1 to 29. Be that as it may, such notification for the first time brought before this Court. Apart from above, it is the claim of the applicant that the suit property is notified as slum can be inferred from the very proceedings taken out by the Slum Authority by including the name of the applicant in Annexure-II on 6th January, 2018. No document was

produced by the applicant either before this Court or before the Appellate Court to substantiate the said claim. Rather it was always open for the applicant to take recourse to the provisions of Order XLI Rule 27 of the CPC for production of such evidence at appellate stage. Even if this Court appreciates the fact that the notification is a public document, and even at this stage, the Court can appreciate the same, still fact remains that the applicant has come out with a case that his property is covered by the notification issued under the Slum Act. Such burden ought to have been discharged by him, which he has failed to, as neither any evidence to that effect nor any documentary evidence is brought on record. The notification speaks of notifying CTS No.252, 252/1 to 29 as slum, however, whether the premises occupied by the applicant is located within the said slum area i.e. CTS No.252, 252/1 to 29 ought to have been proved by the applicant, which he has failed to.

16. In this background, I hardly see any error of jurisdiction or failure to exercise jurisdiction by both the Courts below. That being so, no case for interference is made out.

17. The application as such fails, dismissed.

18. At this stage, prayer is made by counsel for the applicant for protection of possession, as already warrant of possession is issued.

19. Prayer is opposed by Ms. Chaitrali Deshmukh, counsel appearing for decree-holder on the ground that non-applicant needs premises for personal use as he is suffering from cancer.

20. In the facts and circumstances of the case and having regard to observations made herein-above, execution warrant is stayed for period of four weeks from today.

[NITIN W. SAMBRE, J.]