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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.114 OF 2021**

Mrs. Mangala Pravin Mathews @
Smt. Mangala Sonawane Applicant.
V/s
Church of North India Trustees
Association Maharashtra Committee
and Others Respondents.

Mr. Shirish V. Pitre for the Applicant.
Mr. Jaydeep Deo for the Respondents.

CORAM: NITIN W. SAMBRE, J.

DATE: JULY 27, 2022

P.C.:-

1] Applicant was in the employment of the Respondent-Trust in the capacity of Nurse in the Hospital. Amongst other, service conditions prompted her to occupy the premises and as such it is claimed that there was service tenancy in favour of the Applicant. Respondent-Trust preferred proceedings for eviction by filing suit for recovery of possession pursuant to the provisions of Section 16(1)(f) of the Maharashtra Rent Control Act, 1999 being Civil Suit No.103 of 2014. Said suit came to be decreed vide judgment 4/12/2017. Claim of the present Applicant in Regular Civil Appeal No. 8 of 2018 was rejected by the District Judge vide order impugned dated 20/02/2021. As such this Revision.

2] Mr. Pitre, learned Counsel appearing for the Applicant would urge that the notice was issued by the Respondent-employer on 5/12/1995 by intimating the Applicant that she has abandoned her services from 1/6/1995 having not reported for duty. Drawing support from Articles 66 and 67 of the Limitation Act, he would urge that suit ought to have been brought into action within a period of 12 years. According to him, suit in question was initiated beyond the period of limitation and that being so, both the judgments warrant interference.

3] His next limb of submission is, suit was initiated by a Public Trust. Names of Plaintiff-Trustees who pursued the suit were not mentioned/entered in Schedule-I of the Trust maintained under Section 22 of the Maharashtra Public Trusts Act. As such, according to him, suit at the behest of such Plaintiffs is not legally maintainable.

4] Mr. Deo, learned Counsel for the Respondent-Trust would urge that suit was initiated in view of the fact that the Applicant has abandoned her services and notice to that effect i.e. to vacate the suit premises was served upon her on 27/3/2006. According to him, suit was well within limitation as same was filed within 12 years from the date of issuance of such notice. In addition, his contentions are, issue of competency of the Plaintiffs was not contested and therefore it is not open for the Applicant to agitate on the point of maintainability of the suit at the behest of such persons whose names are not entered in Schedule-I of the Bombay Public Trusts Act at this stage of the proceedings.

5] I have appreciated said submissions.

6] Suit of the Respondent-Trust came to be decreed on the ground that suit premises were required for bonafide use. Respondent-Trust is running hospital. Premises are required for accommodating staff of the hospital for attending emergency duties. Fact remains that Court has considered the issue of comparative hardship in favour of the Respondent-Trust and also noticed that Applicant is liable to be evicted, she being ceased to be in the employment of the Respondent-Trust.

7] Fact remains that notice dated 5/12/1995 pertains to abandonment of services of the Respondent-Trust by the Applicant. Though, there is no mention about termination of alleged service tenancy of the Applicant in the said notice, fact remains that specific notice was issued to the Applicant, thereby terminating her tenancy on 27/3/2006. It is this notice of 2006 which was formed to be the basis for initiation of suit for eviction.

8] Having remedy under Article 66 available of initiation of proceedings on the ground of forfeiture of tenancy and on other hand, eviction on the ground of coming to an end of service tenancy, Plaintiff has right to choose one of them. Rightly so in this case Plaintiff-Trust has initiated proceedings after termination of tenancy of the Applicant by issuing notice in 2006. Once the suit for eviction is based on eviction notice dated 27/3/2006 and not 5/12/1995 the suit was well

within limitation of 12 years. In the aforesaid backdrop, contentions raised by Mr. Pitre are liable to be rejected.

9] As regards competency of the Trustees to file suit is concerned, in response to Court's query, it is brought to my notice that issue of competency was not agitated and fact remains that competency spelt out in pleadings in the plaint so also in the examination-in-chief of the Plaintiff was not controverted by subjecting witness of the Plaintiff to cross-examination by the Applicant-Defendant. As such, evidence of witness of the Plaintiff-Trust remained uncontroverted. That being so, Courts below had no occasion to test the issue of competency, particularly in the absence of any issue being framed to that effect. Merely because Applicant has examined the Officer from the office of Charity Commissioner who speaks about pendency of Change Report Proceedings that by itself will not give any lever for recording findings in favour of the Applicant to infer that suit at the behest of the Trust and Trustees was not maintainable. As such, burden shifts on the Applicant which she has failed to discharge.

10] In this backdrop, having regard to concurrent findings and in the absence of any error of jurisdiction no case for interference is made out. Revision Application fails and same stands rejected.

11] Execution, if any, not to be given effect to for a period of three months from today.

(NITIN W. SAMBRE, J.)