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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 115 OF 2022**

Raju Deganna Shetti Applicant.

V/s

Dinkar Nilay Shetti and Ors. Respondents.

Dr Virendra Tulzapurkar a/w Mr. Mandar Soman i/b Mr. Sahil Mahajan for the Applicant.

Mr. Shriram S. Kulkarni a/w Mr. Hemant Ghadigaonkar for Respondent No.1.

Mr. Raju D. Shetti, Applicant, present.

CORAM: NITIN W. SAMBRE, J.

DATE: MARCH 30, 2022

P.C.:-

1] Alleging forced dispossession, suit under Section 6 of the Specific Relief Act was brought into action by the Respondent No.1 /Plaintiff, which came to be decreed by the Joint Civil Judge, Senior Division, Panvel vide judgment and order dated 18th March, 2019. As such this Revision.

2] While questioning the said judgment and decree, Dr. Virendra Tulzapurkar, learned Senior Counsel for the Applicant would invite

attention of this Court to the view expressed by the Apex Court in the matter of *East India Hotels Ltd. vs. Syndicate Bank* reported in **1992 Supp (2) SCC 29**, particularly paras 8, 9, 10 and 44. According to him, once license period is over, possession of the licensee becomes illegal. That being so, it is always open for the landowner to take possession of the suit property. He would further urge that divergent views expressed in aforesaid judgment were not adjudicated upon as parties in the said matter have settled the dispute amicably. However, he has relied on the judgment of this Court in the matter of *PB Beer Garden Restaurants Pvt. Ltd. vs. Sumit Kumar Ganguly Trust and Others* reported in **2020 SCC OnLine Bom 2997** so as to claim that based on view expressed in the *East India Hotels Ltd* cited supra, this Court has held that suit under Section 6 is not maintainable. According to him, based on above, view about non-maintainability of the suit under Section 6 of the Specific Relief Act has to be considered to the benefit of the Applicant whose possession needs to be protected by quashing the decree under challenge.

3] The next limb of the submission is, there is inbuilt limitation

prescribed under Section 6 of the Specific Relief Act under which suit has to be brought in action within a period of six months from the date of dispossession which, in this case, is 18th March, 2011. He has invited attention of this Court to the judgment impugned, so as to claim that suit was initiated on 19th September, 2011, as such same is beyond the period of six months and that being so suit is not maintainable. As such, According to him, judgment impugned warrants interference.

4] While opposing the claim, Mr. Kulkarni, learned Counsel for the Respondent No.1/original Plaintiff would urge that original landlord has already accepted the decree, as same is not challenged by him. Applicant/Defendant No.4 is intruder in the suit premises who was inducted by the landlord and as such present Application is not maintainable at his behest. Apart from above, according to him, suit claim was brought within limitation as the plaint was presented on 14th September, 2011. He would urge that provisions of Section 6 takes into its ambit very claim of licensor forced dispossessing of the licensee. As such, according to him, present Application is liable to be

dismissed.

5] Considered rival submissions.

6] Admittedly Defendant/original landlord has accepted the decree, as the same is not questioned by him before this Court. Applicant before this Court is Defendant No.4 who is inducted by the landlord after dispossession of Plaintiff. Since the decree affects his right, same has been questioned by him.

7] If we consider the issue of limitation, fact remains that suit was presented on 14th September, 2011 as is apparent from the record whereas same was placed before the Court on 19th September, 2011 as is apparent from the judgment.

8] Section 6 of the Specific Relief Act reads thus :-

“6. Suit by person dispossessed of immovable property.—

(1) If any person is dispossessed without his consent of

immovable property otherwise than in due course of law, he or any person [through whom he has been in possession or any person] claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

(2) No suit under this section shall be brought—

(a) after the expiry of six months from the date of dispossession; or

(b) against the Government.

(3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(4) Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.”

9] Plain reading of sub-section (2) of Section 6 contemplates that suit claim has to be brought into action before expiry of six months from the date of dispossession.

10] Though learned Senior Counsel for the Applicant relied on Rule 8 and 10 of the Civil Manual, same are for the purpose of ministerial

act i.e. for facilitating processing of plaint on administrative side. Limitation shall stop running, once Plaint is presented which, in this case, is admittedly on 14th September, 2011. The learned Senior Counsel though has claimed that suit was registered with the judge after expiry of limitation period i.e. on 14th September, 2011, however, this Court is required to be sensitive to the difference between lodging, filing, presenting of a Plaint. Fact remains that plaint in the suit proceedings was admittedly lodged on 14th September, 2011 and limitation has stopped running from the same point. Rule 8 of the Civil Manual provides for steps to be followed in the examination of the Plaint. After examination of the Plaint, Rule 12 contemplates the plaint to be placed before the judge for orders. As such, procedure contemplated for presentation as provided under Rule 7 of Chapter-II of Civil Manual once is complied with, it has to be held that limitation shall stop running from the said date.

That being so, Court below was justified in recording a finding that suit under Section 6 of the Specific Relief Act was brought in action within a period of six months from the date of dispossession i.e. from 18th March, 2011.

11] As far as next contention as regards maintainability of suit under Section 6 in the given set of facts and circumstances is concerned, fact remains that status of the Respondent No.1/Plaintiff in the suit is that of licensee. Existence of such relationship can be inferred from the fact that original owner initiated Special Civil Suit No.126 of 2010 before Civil Judge, Senior Division, Panvel, for recovery of possession.

12] The landlord i.e. Defendant No.1 has withdrawn the suit unconditionally. As such, instead of taking legal recourse to get the possession, Defendant No.1 has forcibly taken possession from the Plaintiff.

13] The execution of Leave and License Agreement-Exhibit-27 in the month of March, 2002 was very much established and as such, Plaintiff is able to demonstrate from oral and documentary evidence on record about his lawful possession over the suit premises for 15 years. Defendant No.4, though has claimed that Defendant Nos. 1 and 2 handed over possession of the suit premises vide Leave and License Agreement dated 01/03/2011 for a period of ten years based

on which he is carrying on business in the name of Ajit Palace Bar and Restaurant, rather from the evidence of Plaintiff it was established that the suit property was handed over to him under the Leave and License Agreement-Exhibit-27 recitals wherein demonstrate that same was for the purpose of running hotel business. Rent fixed was at the rate of Rs 20,000/- per month for a period from 01/04/2002 to 31/03/2007 which period was to be extended from 01/04/2007 for a period of five years on monthly rental of Rs 25,000/- per month. Subsequent five years extension was on monthly rental at the rate of 29,000/- per month from 01/04/2012 upto 31/03/2017. Apart from above, recitals provide that Plaintiff/Respondent has given security deposit which was accepted by Defendant No.1. Since the execution of Leave and License Agreement-Exhibit-27 is admitted by the landlord, the same establishes lawful possession of the Plaintiff over the suit premises.

Defendant No.4 claims to be licensee of Defendant Nos. 1 and 2 based on alleged license deed dated 01/03/2011. As such, Defendant No.4 i.e. Applicant herein is claiming lawful possession over the suit property being licensee. Though he has claimed that there is no

privity of contract between Plaintiff and Defendant No.4, however this Court is conscious of the fact that Defendant No.4 i.e. Applicant is claiming possession through Defendant Nos. 1 and 2. The Apex Court in the matter of *Sadashiv Shyama Sawant(D) Through LRs vs Anita Anant Sawant* reported in (2010) 3 SCC 385, has held that a suit under Section 6 of the Specific Relief Act is maintainable even against a person who is claiming through landlord. As such, it has to be held that suit against present Applicant i.e. Defendant No.4 under Section 6 is rightly held to be maintainable.

14] From the pleadings in the Special Civil Suit No.126 of 2010, it is quite apparent that Defendant No.1 pre-supposed possession of the Plaintiff over the suit property which has prompted him to initiate suit for recovery of possession being RCS No.126 of 2010. Copy of the FIR at Exhibit-31 speaks of the forcible possession of the Respondent/Plaintiff from the suit premises. Rather, Defendant No.1-landlord has failed to demonstrate receipt of lawful possession from the Plaintiff after suit being Special Civil Suit No.126 of 2010 was withdrawn.

15] As such, it is specifically established by the Respondent/Plaintiff that before six months from the date of initiation of suit, he was dispossessed and till then his possession was lawful under Leave and License Agreement-Exhibit-27.

16] As far as contention of learned Senior Counsel for the Applicant that in the matter of *East India Hotels Ltd.* (supra) divergent views are expressed by the Apex Court on the issue of maintainability of suit under Section 6 of the Specific Relief Act is concerned, this Court is required to be sensitive to the effect of such findings recorded by the Apex Court and whether such findings can be given colour of judgment being binding precedent. The said pronouncement is referred to jointly by both the judges to the Hon'ble Chief Justice for constitution of a larger Bench as views expressed by them were exactly divergent on the same point. In that view of the matter, said pronouncement cannot be termed as a judgment and as such will lose its efficacy as precedent.

So as to substantiate aforesaid observations support can be drawn from the judgment of the Full Bench of the High Court of Allahabad in the matter of *Shriram Industrial Enterprises Ltd vs. The Union of India and others* reported in **1995 SCC OnLine All 647**. Para 118 of the said judgment reads as under:-

“118. If that be the real meaning of the word judgment, it follows as a corollary that there can be only one judgment in a case. Two contradictory judgments or judgments in variance with each other will not have the effect of deciding any question or issue in the case or of deciding any of the rights of the parties. It is also plain that such judgments can neither be enforced nor be given effect to. Therefore, if two Judges constituting a Division Bench give contradictory decisions or decisions at variance with each other, in law, such decisions cannot be called as judgments as they do not decide any question or issue in the case or proceeding nor do they decide any of the rights of the parties, the real test being what is the effect of the two decisions on the case or proceedings in which it is made, the language or phraseology used being wholly immaterial having no bearing. In such a situation, the decision so rendered will only amount to opinions of the respective Judges, This

principle will, however, not apply where on account of some statutory provisions like Section 98, C.P.C. contradictory decisions be their own force lead to decision of any question or issue in the case for any of the rights of the parties.”

In the aforesaid backdrop, it can be safely inferred that judgment in the matter of *East India Hotels Ltd.* (supra) is not laying down any law which can be termed binding on this Court under Article 142 of the Constitution of India. In the above referred Judgment of the Apex Court, while dealing with the claim under Section 6 of the Specific Relief Act, one of the view is, said provision prohibits use of force or unlawful means for dispossessing a person. One of the Hon’ble Judge was of the view that these circumstances are lacking in the case before them. That being so, further observed that after license period is over, licensee has no right to claim possession from the landlord.

17] In divergent view, it is expressed that law respects possession even if there is no title to support it. It has also been observed that no one is permitted to take law into one’s hand so as to dispossess a

person in actual settled possession without due course of law, which virtually amount to allowing a person to become a judge in his own case. The Hon'ble Judge then has proceeded to consider very object of Section 6 i.e. to discourage people to act in self-help-, however good their title may be. The Judge then proceeded to consider certain hypothetical cases on facts and preferred to disagree with the aforesaid view reflected in the last paragraph.

18] In this background, reliance placed by Dr. Tulzapurkar, learned Senior Counsel on the judgment of *PB Beer Garden Restaurants Pvt. Ltd.* cited supra has not persuaded this Court to accept the view expressed therein, as the judgment in the matter of *East India Hotels Ltd* cited supra can not be termed as precedent.

19] In the aforesaid backdrop, status of the Respondent No.1/Plaintiff is that of licensee can be inferred. The said fact based on oral and documentary evidence prevailed before the Court below while passing the judgment impugned for holding that Respondent No.1/Plaintiff was in settled possession of the suit property.

20] In that view of the matter, I hardly see any reason which warrants interference in the judgment impugned, particularly when suit at the behest of the Respondent No.1/Plaintiff under Section 6 has to be held to be maintainable as the same was well within limitation. This Court is conscious of the fact that suit for possession was withdrawn by the original landlord unconditionally. That being so, in my opinion, no error of jurisdiction could be noticed in the present Application. Application as such fails and same stands dismissed.

21] At this stage, learned Senior Counsel for the Applicant submits that in view of divergent opinions expressed in the matter of *East India Hotels Ltd* (supra), Applicant intends to take his chance before the Apex Court by questioning the present judgment. As such, he would urge that interim relief in operation in the present matter be continued for a period of eight weeks. Prayer is not objected by Counsel for the Respondent No.1/Plaintiff. Counsel for the decree holder/Plaintiff would urge that this Court must fix a specific period within which Applicant must surrender possession and be directed to

furnish an undertaking to that effect. In response to above, Dr. Tulzapurkar, learned Senior Counsel for the Applicant assures this Court on instructions that in case if Applicant fails to get any protection from the Apex Court by 31st May, 2022, possession shall be delivered to the decree holder/Plaintiff. He submits that appropriate undertaking to that effect shall be filed in this Court within a period of five weeks from today. As such, aforesaid statement is accepted as an under taking to this Court, subject to which possession of the Applicant is protected till 31st May, 2022.

(NITIN W. SAMBRE, J.)