

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

**CIVIL REVISION APPLICATION NO. 443 OF 2022**

Mehmood Ahmed Shamsuddin Khan                      ...      Applicant/Appellant/  
Defendant

Versus

Arshad Rafiq Charolia & Anr.                                      ...      Respondents  
Original Plaintiffs

Mr. A.M. Saraogi for the Applicant.

Mr. Shravan M. Vyas for Respondent Nos.1 and 2.

**CORAM :     R.I. CHAGLA, J.**

**DATED :     16<sup>th</sup> DECEMBER, 2022.**

**ORDER :**

1                      Heard the learned Counsel for the parties.

2                      By this Civil Revision Application the Applicant is seeking quashing and setting aside the impugned order dated 05.05.2022 passed by the Appellate Bench of Small Causes Court, Mumbai, whereby the Appeal of the Applicant herein was dismissed with costs. Further relief is sought for quashing and setting aside the impugned judgment and decree dated 21.01.2017 passed by the Small Causes Court in R.A.E. Suit No.1205/1835 of 2010 by which suit filed by the Respondents was

decreed against the Applicant.

3           The main ground of challenge of the impugned judgment and order in the Civil Revision Application is with regard to the applications which had been made by the Applicant for seeking production of additional evidence under Order 41 Rule 27 of the Code of Civil Procedure before the Appellate Bench as well as the application for permission to place on record additional documents on behalf of the Applicant/Defendant/Appellant in the Appeal No.110 of 2017 challenging the impugned judgment and order of the Trial Court dated 21.01.2017 having been rejected.

4           The case of the Applicant is that he was unaware that evidence close pursis came to be filed on his behalf by his Advocate. Thus precluding him from leading evidence or producing documents which were material in the case.

5           Mr. Saraogi, learned Counsel appearing for the Applicant has referred to the impugned judgment and order. He has submitted that the Trial Court had considered the issue as to the maintainability of the suit wherein the case of the Defendant was that there was ignorance as to the status of the Plaintiffs who claimed to be the surviving heirs of the original owner/ landlord. The Defendant by not leading evidence could

not establish as to whom the Defendant was paying rent to and as to whether the heirs of the original owner/landlord were at all recognized. The Trial Court has answered the issue as to the maintainability of the suit in the affirmative by not considering the Defendant's case and/or the evidence which he may have produced if permitted. The Trial Court has gone on the premise that if the heirs of the original owner/landlord had common interest then they can file the suit even if some of the legal heirs have not been joined. Thus, the objection taken by the Defendants with regard to not adding the mother and sisters of the Plaintiff and the suit not being maintainable, has not been accepted. The Trial Court held that except this objection no material has been put forth by the Defendant for holding or establishing that the Suit is not maintainable.

6           The Defendant had been accepted to be the tenant of the suit premises on strength of registered Tenancy Agreement dated 31.08.2004. The suit premises was being used according to the Applicant only for the purpose of business. In view of the Defendant being irregular in payment of rent, demand notice sent by the learned Advocate for the Plaintiff was pasted on the board of the suit premises as service of the notice had been refused. The Defendant had failed to comply with the demand notice. The Plaintiff was thus held entitled to be evicted from the suit premises.

7           Mr. Saraogi has submitted that the impugned judgment and order of the Appellate Bench in rejecting the applications for adducing additional evidence as well as for placing on record additional documents by the Applicant/Original Defendant has failed to consider the purport of adducing such additional evidence and placing on record additional documents which was in view of the denial of the Defendant that the Plaintiffs are owners and landlords of the suit premises. The Appellate Bench has gone on the premise that the opportunity was given to the Applicant/Original Defendant to lead evidence in the matter but the Applicant/Original Defendant had chosen not to enter into the witness box and for that purpose he has filed evidence closure pursis. The Appellate Bench was required to consider that the Applicant/Original Defendant being a scrap dealer and having no legal knowledge was solely relying upon his Advocate. Further, he had no knowledge of the evidence close pursis being filed on his behalf. The Appellate Bench by rejecting such application has not granted an opportunity to the Applicant/Original Defendant to adduce additional evidence which is permissible under Order 41 Rule 27 of the Code of Civil Procedure.

8           Mr. Saraogi has further submitted that the documents required to be brought on record showed that there was an assignment by the original tenant in favour of the Applicant/Original Defendant and had

accordingly surrendered his rights to the Applicant. It was the Original Defendants' case that the original tenant had given no objection for transfer of rent receipt in respect of the suit premises in favour of the Original Defendant. There was a power of attorney also executed in favour of the Original Defendant. The original tenant by affidavit dated 11.04.2002 surrendered the tenancy in favour of the landlord. The Appellate Bench in not allowing such additional documents being produced failed to consider that the additional documents were required for pronouncement of judgment by the Appellate Bench and that there was substantial cause in reliance by the Original Defendant on these additional documents.

9           Mr. Vyas learned Counsel for the Respondents has vehemently opposed any relief being granted in favour of the Applicant in the Civil Revision Application. He has submitted that the Appellate Bench has given a proper finding insofar as the merits of the matter was considered. The Applicant/Original Defendant had been a defaulter in payment of monthly rent from January, 2016 and application was made for permitting the Applicant/Original Defendant to deposit rent from January, 2016 in Court. The application though allowed, there was default on the part of the Applicant/Original Defendant in making deposit in the Court. The Appellate Bench considered that in view of the Appeal being in

continuation of the suit, the tenant was required to deposit rent for the period of the appeal. In view of the Applicant/Original Defendant not depositing the rent in the Court during the pendency of the Appeal, he was not entitled to protection under Section 3 of Sub-section 15 of the Maharashtra Rent Control Act, 1999.

10           Mr. Vyas has also submitted that the Appellate Bench has given proper reasoning for rejecting the applications under Exhibits 13 and 21 i.e. the subject applications for adducing additional evidence and production of additional documents under Order 41 Rule 27 of the Code of Civil Procedure. Further the additional documents were considered to be not relevant for assisting the Appellate Bench in pronouncement of judgment in view of there already being an admission by the Respondent/Original Plaintiff that the Applicant/Original Defendant is the tenant of the suit premises. Further, the Appellate Bench has found that sufficient opportunity was given to the Applicant/Original Defendant to lead evidence in the matter but he chose not to enter into witness box. Written notes of arguments had also thereafter been filed. Thus there had been no hurry on the part of the Trial Court for disposal of the suit. All important stages of the suit have been properly followed by the Trial Court. He has accordingly submitted that there is no ground made out for challenge of the impugned judgment and order of the Appellate Bench of

the Small Causes Court.

11           Having considered the submissions, in my view the trial Court had considered that the Plaintiff had filed a pursis at Exhibit 22 for closure of evidence after PW1 was cross-examined on 10.11.2016. Thereafter, on 30.11.2016 there was an application made for modification of a prior order. On that day too, the Applicant/Original Defendant was absent. There was evidence close pursis filed by the Advocate of the Applicant/Original Defendant. Though it is the claim of the Applicant/Original Defendant that he had no knowledge of the evidence close pursis and that he was prevented from producing documents and adducing evidence, the Applicant/Original Defendant has failed to show any due diligence. This can be seen from the subsequent events i.e. after the close pursis being filed by the Advocate for the Defendant, written submissions had been filed by the parties including the Applicant/Original Defendant on 19.12.2016. The trial Court had proceeded with hearing of the suit by giving ample opportunity to the Applicant/Original Defendant to present his case. The Applicant/Original Defendant ought to have immediately upon coming to know of the evidence close pursis being filed, that is assuming that he didn't have knowledge when the evidence close pursis had been filed, made an application before the trial Court for allowing him to withdraw the close pursis or lead evidence. The applications

which were under consideration of the Appellate Bench were filed under Order 41 Rule 27 of the Code of Civil Procedure on 21.01.2018, though the trial Court had decreed the suit filed by the Respondent/Original Plaintiff on 21.01.2017. I find no infirmity in the finding of the Appellate Bench that all important stages of the suit have been properly followed by the Trial Court. Though the opportunity was given to the Applicant/Original Defendant, same had not been availed of. Accordingly, it has been held that it is not proper to permit the Applicant/Original Defendant to now adduce additional evidence.

12 I further find no infirmity in the impugned judgment and order of the Appellate Bench of the Small Causes Court which has rejected the application of the Applicant/Original Defendant for placing on record additional documents. It has been held by the Appellate Bench that the Respondents/Original Plaintiffs have admitted that the Applicant/Original Defendant is the tenant of the suit premises. The additional documents as aforementioned and relied upon by the Applicant/Original Defendant only showed assignment of the tenancy by the original tenant in favour of the Applicant/Original Defendant. There was surrender of tenancy by the original tenant in favour of landlord. In that connection there was a power of attorney executed. Thus, the Appellate Bench has upon proper appreciation of these documents considered they were not necessary for

determination of the controversy between the parties as tenancy stood admitted. Further, the Appellate Bench has held that the application for production of additional documents does not show that there has been due diligence on the part of the Applicant/Defendant in producing those documents before the trial Court. Thus, in my view the Appellate Bench of the Small Cause Court has correctly rejected the applications of the Applicant/Original Defendant under Exhibits 13 and 21.

13           Accordingly, the Civil Revision Application is dismissed. There shall be no order as to costs.

14           Mr. Saraogi has applied for stay of this order in view of the Applicant requiring to vacate the suit premises and for which time would be required. However, considering that the stay which had been earlier granted by the lower Court had been vacated in October, 2019 as well as there being no infirmity in the findings of the Appellate Bench of Small Causes Court, the application for stay is rejected.

**(R.I. CHAGLA, J.)**