

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

WRIT PETITION NO.12113 OF 2018

Cyril S. Creado
(since Deceased) Through LRS. ...Petitioners

Versus

Mrs. Nateline Joseph D'souza
(since Deceased) Through LRS. ...Respondents

....

Mr.Vatsal Shah I/b. Mr.Manoj Nikose, for Petitioners.

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CORAM : NITIN W. SAMBRE, J.

DATED : 11th NOVEMBER, 2022

P.C.:

1. This petition under Article 227 is by the plaintiffs for quashing the judgment delivered by Small Causes Court, Bandra, Mumbai in R.A.E. Suit No.4921 of 1988, initiated by the petitioners/plaintiffs for eviction of respondents/tenants on the ground of the material alteration to the existing structure so also on other grounds. The Small Causes Court has dismissed the suit of

the Petitioners vide judgment and order dated 20/07/2012 which was confirmed in an appeal being Appeal No.43 of 2012 decided on 03/05/2018.

2. The learned counsel for the petitioners would urge that both the Courts below have committed an error in recording findings that the petitioners have failed to establish the material alterations carried out by the respondents to the existing structure. So as to substantiate his contention, my attention is invited to the testimony of the witness of the petitioners/plaintiffs, his cross-examination, evidence of D.W. 2 an employee of the Municipal Corporation in support of document at Exhibit-82, so also the document at Exhibit-47. He would urge that from the evidence of the respondents/defendants, it can be admitted that existing teak wood roof on the first floor was replaced by substandard material i.e. wooden rafter which has resulted into damaging the same. He would claim as a sequel of aforesaid illegal act on the part of the respondents, the roof on the first floor percolated and rain water has entered through the flooring of first floor in the

roof of the ground floor thereby causing nuisance and annoyance to the petitioners/landlord. He would urge that by adducing sufficient evidence said fact duly established which is not considered and dealt with by both the Courts below.

3. I have appreciated the said submissions.

4. At the outset, it is noted that the document Exhibit-82 was duly proved from the testimony of the D.W.2 Mr.Shinde an employee of the Corporation of Greater Bombay. The said document in categorical term speaks the permission granted in favour of the respondents/tenants to carry out repairs as the petitioners/landlords have failed to carry out repairs. As regards, the non return of original material by the respondents after carrying out the repairs is concerned same will not amount a reason for seeking an order of eviction of the respondents as same perhaps gives independent cause to the petitioners for some different relief viz. compensation, damages etc. If the testimony of the petitioners both in the form of affidavit in evidence of

examination-in-chief and cross-examination is appreciated, the petitioners were unable to answer as to date on which the original respondents/defendants carried out the repairs to the premises and life of the structure. Apart from the above, the petitioners have relied on the document Exhibit-47 wherein notice is issued to respondents/defendants by the Assistant Engineer for not carrying out the proper repairs. The fact remains the said document Exhibit-47 was not proved. Even if it considered that the said document is a public document, still fact remains that the said document directs the respondents to carry out necessary repairs within seven days of receipt of notice. As such, it was expected of the petitioners to establish that after issuance of communication Exhibit-47, a notice by the Municipal Corporation, the respondents have failed to carry out repairs resulting into damage to the suit premises.

5. Rather the Petitioners have failed to establish the same by either examining the Engineer or any employee of the Corporation.

6. It is also noted that the petitioners have tried to take the advantage of the alleged repair permission given in favour of the respondents/tenants so as to establish their case of unauthorised alteration to the suit premises. This Court is required to be sensitive to the fact that the permission Exhibit-82 was in favour of the respondents which was as a sequel of failure of the petitioners to carry out the repairs. Apart from the above, such repairs which were carried out by the respondents cannot be said to be causing material alteration to the existing structure. The petitioners, as such, have failed to establish that the respondents have caused any material alteration to the suit structure which warrants an order of his eviction.

7. That being so, no error of jurisdiction or illegality could be noticed which warrants interference in extraordinary jurisdiction.

8. As such, the petition fails, dismissed.

(NITIN W. SAMBRE, J.)