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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.50 OF 2022

M/s. Hakoba Ltd. & ors. **...Applicants**

Versus

Rajan Motiram Jayakar & Ors. **...Respondents**

Mr. Ranjit Thorat, Senior Advocate with Ruchir L. Tolat i/b. M/s. L.C. Tolat and Co. for the Applicants.

Mr. Girish Godbole, Mr. Shabbir Jariwala and Ms. Anushka Panchmatia i/b. MDP and Partners for Respondent Nos.1 to 4.

CORAM : R.I. CHAGLA J.
DATE : 7TH DECEMBER, 2022.

ORDER :

1. Heard Mr. Thorat, learned Senior Counsel for the Applicants and Mr. G.S. Godbole for the Respondent Nos.1 to 4.

2. By this Civil Revision Application, the Applicants are challenging the judgment and order passed by the Appellate Bench of Small Causes Court dated 9th July, 2012.

3. The case of the Applicants is that the Applicants were sub tenants in respect of the Suit premises which is defined in paragraph 2(a) of the Civil Revision Application. The original tenant

was the Bank of India. The Respondent Nos.1 to 4 had filed a Suit only against the Bank of India being RAE Suit No.1963 / 6065 of 1986 on grounds of bonafide requirement.

4. The Applicants state that they became direct tenants of the landlord by virtue of Section 15A of the old Bombay Rent Act and despite which they were not made party to the said Suit much less they were not informed about the pendency of the Suit.

5. The TE & R Suit No.195/208 of 2001 was compromised and consent terms were entered into between the Respondent-landlord and the Bank of India, the original tenant and by which the Bank of India submitted to a decree of eviction in respect of the Suit premises and agreed to vacate and handover the Suit premises.

6. The Applicants remained in possession of the Suit premises and accordingly, the Respondent issued obstructionist Notice being No.73 of 2003. The Applicants had challenged the said obstructionist notice in TE & R Suit No.195/208 of 2001. The learned Single Judge of the Small Causes Court, Mumbai by its order dated 9th July, 2012 allowed the obstructionist notice and directed the obstructionists to vacate and handover the possession of the Suit

premises. The Single Judge held that obstructionists No.3 failed to prove that he is a protected or deemed tenant even after exemption of the Suit premises under the Maharashtra Rent Control Act. The obstructionist No.3, though inducted as sub tenant of Defendant No.1 by consent of the Plaintiffs was held to be still bound by the decree under execution. Accordingly, the learned Single Judge held that the obstructionist Nos.1 and 2 claiming to be licensees were no longer protected in view of exemption of the Suit premises under Section 3(1) (b) of the Maharashtra Rent Control Act, 1999 and the decree of eviction was binding on them.

7. The Applicants herein preferred an Appeal before the Appellate Bench of Small Causes Court, Mumbai being Misc. Appeal No.137 of 2012. The Appellate Bench by the impugned judgment and order dated 3rd May, 2018 dismissed the Appeal by upholding the findings of the Trial Court which required no interference.

8. Being aggrieved by the impugned judgments and orders, the Applicants have preferred the present Civil Revisions Application.

9. Mr. Thorat, learned Senior Counsel for the Applicants has submitted that the Court below has failed to consider that the

Applicants were the sub tenants and fell within the definition of tenants which includes sub tenants as permitted under contract or by consent of the landlord under Section 7(15) of the Maharashtra Rent Control Act. He has submitted that the Applicants were inducted into the Suit premises as sub tenants by the original tenant viz Bank of India with the consent of the landlord.

10. Mr. Thorat has submitted that Section 25 of the Maharashtra Rent Control Act provides that the sub tenant shall become tenant on determination of tenancy. It is provided therein that when the interest of the tenant of any premises is determined for any reason, the sub tenant to whom the premises has been lawfully sublet and such subtenancy is subsisting from the date of commencement from the Maharashtra Rent Control Act and that sub tenancy is permitted by contract between the landlord and tenant, which is the present case, the sub tenant shall, subject to the provisions of this Act be deemed to be tenant of his landlord on such terms and conditions as it would have held, if the tenancy had continued.

11. Mr. Thorat has submitted that the Court below has considered Section 3(1)(b) of the Maharashtra Rent Control Act to be

applicable and which provides that the premises let to inter alia banks is exempt from the Maharashtra Rent Control Act. He has submitted that the original tenant being Bank of India was accordingly exempt from the applicability of the Maharashtra Rent Control Act and could be proceeded by the Respondent landlord under Section 106 of the Transfer of Property Act by issuing notice of termination as has been done in the present case.

12. Mr. Thorat has submitted that in the Suit which was filed by the Respondent landlord viz. TE & R Suit No.195/208 of 2001 the Applicants were not joined as party Defendants. He has submitted that the Applicants were protected under the Maharashtra Rent Control Act and the exemption under Section 3(1) (b) was not applicable to the Applicants, though applicable to the original tenant Bank of India. The Applicants were deemed tenants under Section 25 of the Maharashtra Rent control Act and he has submitted that the Respondents by not adopting appropriate remedy under law, which would in this case be the Maharashtra Rent Control Act, have merely issued obstructionist notice for evicting the Applicants. He has accordingly submitted that the Court below has not construed Section 25 of the Maharashtra Rent Control Act by which the

Applicants were protected under the Maharashtra Rent Control Act. The Court below has in finding that the obstructionist notice is valid and that the sub tenants of the original tenant Bank of India were bound by the decree under execution, have arrived at an erroneous finding in law, which requires to be set aside in Civil Revision Application.

13. Mr. Godbole, learned Counsel appearing for the Respondents has drawn this Court's attention to the decision of the Supreme Court which has been considered by the Appellate Bench of Small Causes Court. This decision is ***Kersi Commissariat and Ors. Vs. Ministry of Food and Civil Supplies, Govt. of Maharashtra, Mumbai and Anr.[1].*** The Supreme Court in the said decision has considered the very same provision which fell for consideration in the present case namely Section 3(1) (b) and which provides for exemption from the Rent Act in respect of premises inter alia let to banks. He has submitted that the Supreme Court was considering the decision of the Single Judge of this Court, wherein the learned Single Judge of this Court held that a sub tenant inducted by tenant before 1st February, 1973 became tenant within the meaning of Sub Section 11 of Section 5. The Supreme Court had set aside the finding of the

1 (2012) 5 Supreme Court Cases 187.

learned Single Judge of this Court on the ground that the Section 3(1) (b) applies to 'premises' which have been let to the parties mentioned therein which includes banks and Government or local authorities. He has relied upon paragraphs 34 and 35 of the said decision which read thus:-

> ***"34. From the aforesaid it is graphically clear that an insurance company is not protected under the 1999 Act. Once it is held that Defendant No.1 New India Assurance Co. the original tenant, is not protected, the question would be whether a sub-tenant can be protected under the Act. In Bhatia Co.op. Housing Society Ltd. it has been clearly laid down that Section 4(1) of the 1947 Act applies to premises and not to parties or their relationship. Section 3 uses the term "premises". The provision commences with the non obstinate clause that the Act does not apply to any premises belonging to the Government or a local authority. Section 3(1) (b) makes it clear that the Act does not apply (sic to any premises let or sub-let) to any bank, public section undertaking or certain other categories of tenants. The insurance company is covered under Section 3(1) (b). Thus, as a logical corollary, the Act does not apply to the premises held by the insurance company who is a tenant".***
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> ***"35. The learned Single Judge has allowed protection to the government department on the foundation that it has become a tenant. We are disposed to think that the analysis is fundamentally erroneous. When the Act does not cover the tenant, namely, the Insurance Company as basically the exemption applies only to premises and not to any relationship, the sub-tenant who becomes a deemed tenant cannot enjoy a better protection or privilege by ostracizing the concept of premises which is the spine of the provision".***

14. Mr. Godbole has submitted that the Supreme Court has in the above decision held that the exemption under Section 3(1)(b) applies only to premises and not to any relationship. A sub tenant who becomes a deemed tenant cannot enjoy a better protection or privilege by ostracizing the concept of premises which is the spine of the provision. He has accordingly submitted that there is no error committed by the Lower Court in arriving at a finding that the protection cannot be extended to the Applicants herein as either sub tenants or deemed tenants. Thus the Lower Court has held that no protection is available to Applicants as obstructionists under the Maharashtra Rent Control Act and thus liable to be evicted.

15. Having considered the submissions, in my view there is no error of law committed by the Lower Court in the impugned judgments and orders passed by the Trial Court as well as by the Appellate Bench. The issue which arises in these proceedings is whether the sub tenant who was inducted in the premises by consent of the landlord would enjoy protection under the old provision viz. Section 5(11) (b) of the Bombay Rent Control Act, 1947 equivalent to Section 25 of the Maharashtra Rent Control Act, 1990 on determination of the tenancy. Particularly, where the sub-

tenant has derived title before 1st February, 1973. Further, whether the sub-tenant would still enjoy protection when the exemption under Section 3(1) (b) of the Maharashtra Rent Control Act is applicable to the original tenant being a bank. For this Section 3(1) (b) is relevant and which reads thus:-

> ***3. Exemption.***
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> ***(1) This Act shall not apply ---***
>
> ***(b) to any premises let or sub-let to banks, or any Public Sector Undertakings or any Corporation established by or under any Central or State Act, or foreign missions,international agencies, multinational companies, and private limited companies and public limited companies having a paid up share capital of more than rupee one crore or more".***

16. It is this very provision that fell for consideration of the Supreme Court in ***Kersi Commissariat and Ors. (Supra)***. The relevant paragraphs of the said decision extracted above are apposite. The Supreme Court has held that Section 3(1) (b) is not confined to any relationship but applies only to the 'premises' and though the sub tenant may have become deemed tenant by virtue of the aforementioned provisions, they cannot enjoy better protection or privilege by ostracizing the concept of 'premises' which is the spine of the provision viz. Section 3(1) (b).

17. Thus, in the present case the Applicants cannot claim the protection of the Rent Act and have correctly been held by the Lower Court to be obstructionists in the Suit premises having lost protection under the Act. Accordingly, I find no infirmity in the impugned decisions of the Trial Court and the Appellate Bench. Thus, in my view there is no merit in the Civil Revision Application.

18. The Civil Revision Application is accordingly dismissed. There shall be no order as to costs.

19. Mr. Thorat applies for stay of this Order. However, considering that the stay of the execution of the impugned judgment and order of the Appellate Bench of this Court was subject to payment of compensation for their occupying the Suit premises which admittedly the Applicants have failed to deposit, the Application for stay of this Order is rejected.

20. In view of this order, the Civil Revision application No.242 of 2022 does not survive and is accordingly disposed of.

[R.I. CHAGLA J.]