

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

**CIVIL REVISION APPLICATION NO. 202 OF 2019
IN
APPEAL NO. 317 OF 2007
IN
RAE & R SUIT NO. 632/1082 OF 2002**

Shri. Dharmaji Tukaram Malgaonkar ... APPLICANT

V/S

Shri. Vithal Bhikaji Sawant ... RESPONDENT

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Mr. Singh Ravindra Pratap for the Applicant
None for the Respondents.

CORAM: RAJESH S. PATIL, J.

DATE : 13 September 2023

P.C.:

1. This Civil Revision Application has been filed under Section 115 of the Code of Civil Procedure, 1908 (for short “CPC”) challenging the concurrent findings of the Court of Small Causes, by a landlord in an eviction suit filed by him.

FACTS

2. The Applicant herein claims to be the original landlord of the premises which is a Room being Room No.8, situated in

Dharmaji Niwas, Farid Nagar, Pratap Nagar Road, Bhandup, Mumbai – 400 078. (For short “the suit premises”).

3. The Applicant, on 13 March 2002, filed an Eviction Suit being Suit RAE & R Suit No. 632/1082 of 2002 against the present Respondent. The said Suit was initially decreed in favour of the Applicant. An Appeal was preferred by the Respondent before the Division Bench of the Small Causes Court at Bombay against the said Judgement and Order dated 13 March 2007 passed in RAE & R Suit No. 632/1082 of 2022. During the pendency of the Appeal bearing No. 317 of 2007, by its order dated 8 August 2016, the Appellate Court of Small Causes framed Additional Issue in view of present Respondent/ Defendant’s contention that the Suit premises has been declared as Slum by the Competent Authority and therefore the Suit is barred under Section 22 of the Maharashtra Slums Area Act, 1971 (for short “the Slums Act”). The Appellate Court remanded the matter back to the Trial Court to record the Evidence on the said Additional Issue. As the matter was remanded back only on the additional issue framed by the Appellate court, the Single Judge of the Court

of Small Causes thereafter, based on the additional issue framed, decided the issue as under:

“Whether the Suit is barred under Section 22 of the Slums Act, as the Suit premises falls within the Slum area as alleged?”

4. On remand, the Single Judge of the Small Causes Court allowed the parties to lead evidence. The Respondent led his evidence. However, the Plaintiff/ present Applicant chose not lead any evidence. The Single Judge of the Court of Small Causes thereafter, after hearing both the Counsels for the Parties, by its Judgement and Order dated 1 February 2018 answered the Additional Issue in affirmative by holding that the Suit filed for eviction without prior permission by the Competent Authority as per the provisions of Section 22 of the Slums Act is not maintainable and is barred.

5. Being aggrieved by the Judgement and Order dated 1 February 2018, the present Applicant/ Landlord filed an Appeal before the Division Bench of the Court of Small Causes. Thereafter, as the additional issue was answered pending the Appeal, the Appeal was heard by the Division Bench of the Court of Small Causes, being Appeal No. 317 of 2007 filed by the present

Respondent/ Original Defendant. Along with the Appeal, the cross-objection filed by the Applicant herein was also heard. The Appellate Court framed the point for determination, including the point No. 7 which reads as under:

“Whether Suit is barred under Section 22 of the Slums Act?”

The said issue was answered in the affirmative by the Appellate Bench of the Small Causes Court and the Appeal, as far as the present Respondent/ Original Defendant was concerned, was allowed whereas, the cross-objection filed by the present Applicant was dismissed by Judgement and Order dated 18 October 2018.

SUBMISSIONS :

6. In the present Civil Revision Application, the Applicant is challenging the concurrent findings of the Single bench of the Small Causes Court and the Appellate bench of the Court of Small Causes. The Counsel for the Applicant Mr. Singh has submitted that the Notification of 1976 declaring the CTS No. 279, as slums, according to him was set aside vide Notification of the year 1980, which declared only part of the CTS No. 279 as Slum area and not the entire area of CTS No. 279. It is further contended by Advocate

Mr. Singh Ravindra Pratap the Respondent/ Original Defendant that the Suit premises comes within the 1174 Sq. Mtrs. out of the total area of 6386.8 Sq. Mtrs. of CTS No. 279. It is further contended Mr. Singh Ravindra Pratap that the Respondent/ Defendant has not proved that the Suit premises comes within the area admeasuring 1174 Sq. Mtrs. out of the total area of 6386.8 Sq. Mtrs. of CTS No. 279. It is further contended by Mr. Singh Ravindra Pratap that the Appellate Court of the Small Causes, so also, the Learned Single Judge of the Small Causes Court passed Judgement and Order solely relying on the Order passed in Suit No. 3007 of 1980. He further argued that this Civil Revision Application requires to be admitted as there are good grounds for admitting this Civil Revision Application.

ANAYLSIS & CONCLUSION :

7. I have heard the Learned Counsel appearing for the Applicant/ Original Plaintiff and I have gone through the grounds of Civil Revision Application and the documents which are annexed to this Civil Revision Application and also through the Government Gazzette dated 16 September 1976.

8. The Judgement of the Learned Single Judge, so also the Appellate Bench, according to me, has considered the aspect of the Government Notifications which has declared the area in which the Suit premises is situated as Slum. Once the Suit premises falls under an area which is declared as Slums, a Suit for eviction under the Maharashtra Rent Control Act, 1999 is not maintainable. The Counsel for the Applicant was not able to show any documents setting aside the said Notification. The Counsel for the Applicant was not able to demonstrate why the Government notification cannot be relied upon.

9. It is also pertinent to note that the Taluka Inspector of Land Records, Kurla, Mumbai was appointed as a Court Commissioner to inspect the area of the Suit premises. A Survey Report of the Taluka Inspector of Land Records is produced on record. Both the present Applicant and Respondent were present during the Survey being conducted. The Survey report shows that the Suit premises falls within the Slum Area.

10. It appears that the Suit bearing No. 3007 of 1980 was filed in the City Civil Court, Mumbai by the neighbour of the Applicant for removal of encroachment against him, in the said

Suit, the present Applicant had taken a defense that the Suit premises falls under the Slum area as per the Notification of the year 1976. Therefore, it was specifically noted in the order passed by the City Civil Court on 29 January 1998 that the said area falls under the Slums.

11. The Applicants were not able to show any material irregularity in the both the Judgments and Decree of Small Causes Court, hence no warrant to disturb the concurrent findings of fact recorded by both the Courts of Small Causes at Bombay. I do not find any merit in this Civil Revision Application, the same is accordingly dismissed. No cost.

(RAJESH S. PATIL, J.)