



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.528 OF 2011

Shri Bhanudas Nagesh Bali

... Applicant

Versus

M/s. Pranay Construction Pvt. Ltd. and others

... Respondents

— —
Mr. Ram U. Singh for the Applicant.

Mr. Shoaib I. Memon with Mr. Asim Parve for the Respondent Nos.1
and 2.

— —
CORAM : SHARMILA U. DESHMUKH, J.

DATE : July 20, 2023.

P. C. :

1. The revisional jurisdiction of this Court has been invoked to challenge the order dated 19.03.2008 passed in L.C. Suit No.2789 of 2004. The Applicant is partly aggrieved by the impugned order to the extent that the relief of restoration of possession has not been granted due to demolition of the suit premises.

2. The facts of the case are that L.C. Suit No.2789 of 2004 was instituted by the Applicant under Section 6 of the Specific Relief Act, 1963. The case of the Applicant was that he was in

exclusive use and occupation of *Gala* admeasuring 5 x 6 sqr. ft. (carpet) having height of 4 ft. ground floor in 70 Attawala Abad, CTS No.C/5, Hill Road, Bandra (W), Bombay-400 050 as monthly tenant of Defendant No.2 and was carrying on business as electrician from the suit premises since the year 1979-1980 and prior thereto his father was the tenant of the suit premises, however no rent receipt was issued by the landlord. It was pleaded that defendant no.1 was a builder, who claimed to have purchased the property i.e. Attawala Abad building. It was further pleaded that pursuant to development agreement executed between Defendant No.2 and Defendant No.3, the defendant no.3 had executed an agreement dated 21.10.1996 with the Applicant for providing alternate premises in the proposed re-developed building, and letter of attornment was issued. It was pleaded that in 1994, the defendant no.2 had issued document showing that the Applicant was operating electrical business from Attawala building. It was pleaded that the defendant no.1 started harassing and giving threats to the Applicant of dispossession and on 15.10.2003, the officers of defendant no.4—Municipal Corporation came to the suit premises and threatened the Applicant to vacate the suit premises.

3. It was pleaded that the Applicant had approached the police authorities against Defendant No.1. It was pleaded that the Applicant filed L.C. Suit No.5032 of 2003 against the defendants and ad-interim relief of *status-quo* was granted. In the said L.C. Suit No.5032 of 2003, the Court Commissioner was appointed and on 26.10.2003, when the Applicant went to the suit premises, the defendant no.1 and his hirelings did not allow the Applicant to open the suit premises. It was stated that on 27.10.2003, the defendant no.1 and his hirelings had broken open the Applicant's lock and put similar lock, as the court commissioner was to come to the suit premises on 27.10.2003. It was pleaded that the defendant no.1 and his hirelings had removed most of the things belonging to the Applicant at the time of visit of the suit premises by the Court Commissioner.

4. It was further pleaded that during the pendency of the L.C. Suit No.5032 of 2003, on 16.12.2003, the defendant no.1 demolished illegally Attawala building. The Applicant sought the following substantive reliefs:

“a) *That the Hon'ble Court be pleased to declare that the Defendant No.1 has illegally unlawfully and wrongfully dispossessed the plaintiff from the suit premise and the*

plaintiff is entitled for restoration of possession.

- b) that his Hon'ble Court be pleased to direct the Defendant No. 1 by mandatory order to provide permanent alternate commercial premises at ground floor admeasuring 5 X 6 ft. in lieu of the suit premises which was in Attawala Building (demolished) in the proposed building which is to be constructed in CTS No. C/ 5 of village Bandra, Taluaka Andheri, BSD situate at 70 Hill Road, Bandra (W), Mumbai – 50.*
- c) That this Hon'ble Court be pleased to direct the Defendant No. 1 by mandatory order to provide temporary alternate premises admeasuring 5X 6 ft. in lieu of the suit premises which was in Attawal Building (demolished) in CTS No. C/ 5 of village Bandra, Taluka Andheri, BSD situate at 70 Hill Road, Bandra (W), Mumbai - 50 till the permanent alternate premises is provided by the defendant No.1*
- i) in the alternate the plaintiff be permitted to put up a temporary structure at the place of the suit premises of same size in lieu of the suit premises which was in Attawal Building (demolished) in CTS No. C/5 of village Bandra, Taluka Andheri , BSD situate at 70 Hill Road, Bandra (W), Mumbai - 50 at the plaintiff's cost and the Defendant No. 1 be directed to pay the cost to the plaintiff.*

- d) *That this Hon'ble Court be pleased to restrain permanently the defendant No. 1 from using the FSI and / or creating third party right in respect of the FSI equal to 5' X 6' (carpet) in the proposed building which is to be constructed in CIS No.C/5 of village Bandra, Taluka Andheri , BSD situate at 70 Hill Road , Bandra (W), Mumbai – 50*
- e) *The Defendant No.1 be restrained by an order and injunction fro this Hon'ble Court from carrying out any work of any nature and any construction work of the place where the suit premises was situated in Attawala Building, shown in red colour in the rough sketch in CTS No.C/ 5 of Village Bandra Taluka Andheri, BSD situate at 70 Hill Road, Bandra (W), Mumbai – 50*
- f) *That the defendant No. 4 be restrained by an order and injunction of this Hon'ble Court from issuing commencement certificate / occupation certificate of roposed which is to be constructed in C/5 of Village Bandra Taluka Andheri , BSD situate at 70 Hill Road, Bandra (W), Mumbai - 50, till the defendant No. 1 under take to provide and permanent alternate premises in the proposed building which is to be constructed in C/5 of Village Bandra Taluka Andheri , BSD situate at 70 Hill Road, Bandra (W), Mumbai - 50 in lieu of the suit premises which was situated in Attawala Building (demolished).*

- g) *That the Defendant No. 1 be restrained by and order and injunction of this Hon'ble Court from obstruction the plaintiff fro putting temporary structure in CST No. C/5 at the place of the suit premises which is shown in red colour in the rough sketch annexed hereto situate at 70 Hill Road, Bandra (W), Mumbai - 50 and from carrying out the plaintiff business til the defendant No.1 provide permanent alternate premises in the proposed building to the plaintiff.*
- h) *that the defendant No. 1 be directed to pay Rs.15,000/- per month to the plaintiff as the plaintiff sustained loss due to close down of business by the high handed and illegal act of the defendant No. 1 from the dated of filing of this suit till the permanent alternate premises is provided to the plaintiff.*
- i) *That the defendant No.1 be directed to return the articles and materials i. e. 8 fans, 6 new electric wire bundle and tool box which is stolen and ___by the defendant No. 1 after 25.10.2003.”*

5. Defendant no.1 in his written statement contended that in the earlier S.C. Suit No.5032 of 2003, the suit premises is described as gala and no specifications were given and during the hearing of ad-interim relief in the previous suit, the description of the property given was different from the description given in the

present case. It was contended that the court commissioner had visited on 27.10.2003 and had observed that the lock of defendant no.1 was on the suit premises. It was contended that in the conveyance deed dated 17.03.2003 executed between Defendant No.1 and Defendant No.2, there is list of tenants and name of Applicant is not listed. It was contended that the Applicant does not have any premises in the suit building and that the said building was being developed by defendant no.1 as the owner and the eligible tenants have given their consent and have also been accommodated in temporary accommodation and have been re-shifted back in the new building.

6. On 20.09.2004, preliminary issues were framed by the trial Court, which read thus:

	Issues	Findings
1.	Whether Defendant No.1 and 2 prove that the suit is hit under Sec. 33 of Maharashtra Rent Control Act, 1999 in view of relation between the Plaintiff and Defendant Nos.1 and 2 as tenant and landlord respectively?	Deleted vide roznama dt.22.11.08
2	Whether Defendants No.1 and 2 prove that suit is barred by Law of	Deferred vide roznama dated

Limitation especially when suit is filed under Sec. 6 of Specific Relief Act ? 22-11-04

(Now answered in the negative)

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|----|---|-------------------|
| 3. | Whether Defendant Nos.1 and 2 prove that on proper valuation of the subject matter at market value, this Court will not have jurisdiction to entertain and try the present suit? | In the negative |
| 4. | Whether Defendant Nos. 1 and 2 prove that the present suit is not maintainable under Sec. 6 of the Specific Relief Act, more particularly when it is filed against the Corporation? | Does not survive. |

7. On 01.07.2006, the issues were framed as under:

- | Issues | Findings |
|---|--------------------|
| 1. Whether the Plaintiff was in possession of the suit premises till 25th October, 2003 and whether he was dispossessed by the Defendants forcibly on 26.10.03? | In the affirmative |
| 2. Whether Plaintiff is entitled to claim other reliefs like perpetual injunction in a suit under Sec. 6 of the Specific Relief Act? | In the negative |
| 3. Whether the Plaintiff is entitled | In the negative |

for alternate temporary accommodation and possession of a new flat in view of the demolition of old structure ?

8. The trial Court answered the issue No.1 as regards the possession of the plaintiff in the suit premises till 25.10.2003 in the affirmative.

9. As regards the issues which were framed on 24.09.2004, the issue of limitation was answered in the affirmative, as the alleged dispossession of 26.10.2003 and the suit was filed on 22.04.2004 within the prescribed period of limitation of six months.

10. As regards the issues which are framed on 01.07.2006, the trial Court held that the plaintiff was in possession of the suit premises till 25.10.2003. The trial Court examined oral and the documentary evidence produced by the plaintiff which had gone unchallenged in the absence of any cross-examination of PW1 on that count. The trial Court considered the evidence of the witnesses for DW1, who was confronted with the FIR No.445 of 2003, in which it was admitted by the Director of Defendant no.1 that the plaintiff has been disputing about the ownership of the suit

premises. As regards the issue nos.2 and 3 regarding the entitlement for alternate temporary accommodation and possession of a new flat, the trial Court referred to the provisions of Section 6 of the Specific Relief Act and has held that the relief of restoration of possession has become infructuous.

11. The operative order of the trial Court reads thus:

“It is declared that Plaintiff was in possession of premises admeasuring 5 ft. x 6 ft. (carpet) having height of 4" ground floor in 70 Attawala Abad, CTS No.C/5, Hill Road, Bandra (W), Bombay-400 050 and that he was forcibly dispossessed from the same on 26.10.03.

The relief for restoration of possession has become infructuous and cannot be granted in view of the demolition of the said premises.

L.C. Suit No.2789 of 2004 stands decreed as above with costs.

Decree be drawn accordingly.”

12. During the pendency of the present revision application, the application came to be amended to implead the newly formed co-operative housing society as Respondent No 5 and direction was sought to admit the Applicant as member of the Respondent No.5 upon providing him permanent alternate

commercial premises in lieu of the old premises

13. Heard Mr. Singh, learned counsel appearing for the Applicant and Mr. Shoaib I. Memon, learned counsel appearing for Respondent Nos.1 and 2.

14. Mr. Singh, learned counsel for the Applicant has taken this Court through the impugned order and would submit that the suit was filed under Section 6 of the Specific Relief Act and in view of finding of forcible possession, prayer for restoration ought to have been granted. He would further submit that the trial Court failed to notice the alternate relief sought by the Applicant for providing permanent alternate commercial premises. He would urge that the Applicant is entitled to possession of permanent alternate accommodation in the newly developed building.

15. *Per contra*, Mr. Memon, learned counsel for Respondent No.1 submits that the Applicant was aware at the time of filing of suit that the building has been demolished and as such the reliefs sought by the Applicant are beyond the scope of Section 6 of the Specific Relief Act. He would further submit that the Applicant had no concern with the suit property and the report of the Court Commissioner in the other Suit No.5032 of 2003

indicates that the possession is with the Respondent no.1. He would further submit that after the previous Suit No.5032 of 2003 was withdrawn by the Applicant the instant suit has been filed. He would further submit that it is open for the Applicant to adopt independent proceeding to seek to establish title and the relief of alternative accommodation cannot be granted in the instant suit.

16. Considered the submissions and perused the papers with the assistance of the learned counsel appearing for the parties.

17. The revisional jurisdiction of this Court has been invoked to challenge the impugned order dated 9th March, 2008 to the extent that it declines the relief of restoration of possession of the suit premises in view of the demolition of the premises. The instant suit was preferred under Section 6 of the Specific Relief Act, 1963. The Trial Court has answered the issue of the Applicant's possession in the suit premises till 25th October, 2003 and the forcible dispossession on 26th October, 2003 in favour of the Applicant. There is no challenge by the Respondent No.1 to the impugned order and as such the finding has attained finality. The only issue to be considered is whether the relief of restoration of possession of the suit premises could be granted.

18. In the instant suit, in paragraph 14, the Applicant has averred that the defendant no.1 have demolished the Attawala building wherein the suit premises is situated and as such, the Applicant has filed the present suit under Section 6 of the Specific Relief Act for restoration of possession of the suit building. As regards the limitation clause, it is pleaded that the suit has been filed within six months from the date of dispossession from the suit premises. The pleadings in the plaint indicate that the suit has been filed under Section 6 of Specific Relief Act, 1963. Before proceeding further it will be beneficial to reproduce Section 6 of Specific Relief Act, 1963 which 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.”

19. A person dispossessed without his consent otherwise than in due course of law, may by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit. The provision is therefore indicative of the nature of inquiry contemplated therein and the limited relief which can be sought. The inquiry contemplated under Section 6 is summary in nature and the only relief which can be granted, if dispossession without following due process of law is established, is relief of restoration of possession. Now if the reliefs sought in the instant suit is perused, apart from seeking a declaration of wrongful dispossession and restoration of possession the Applicant has gone further and sought mandatory order of providing permanent alternate commercial premises in lieu of the demolished structure. The alternate prayer sought was permission to put up a temporary structure in lieu of the suit premises and also for restraining order from utilizing the FSI of the demolished suit premises. The reliefs prayed for travel much beyond the scope of Section 6 of Specific Relief Act, 1963.

20. It is neither the submission before the Trial Court or before this Court, that the instant suit was not instituted under Section 6 of Specific Relief Act. That being so apart from the prayer clause (a) of the plaint which seeks the declaration of illegal dispossession and restoration of possession, none of the other prayer clause survives for consideration and the Trial Court has rightly not granted the other reliefs. The submission before this Court is that once the issue of dispossession has been answered in favour of the Applicant, restoration should follow. An important aspect is that the building in which the suit premises was situated was demolished even prior to the filing of the instant suit. In such event the remedy of the Applicant was to file a substantive suit claiming right to permanent alternate accommodation in the proposed redeveloped building. The remedy although being available was not availed by the Applicant and the suit was filed under Section 6 of Specific Relief Act, 1963 restricting the scope of inquiry.

21. Admittedly, section 6 of the Specific Relief Act provides a summary and quick remedy for a person who is in possession and has been illegally dispossessed therefrom without his consent. This remedy is meant to restore the status quo ante and thus all

questions of title whether of the plaintiff or of the defendant are out of place in any suit filed under this provision. In a suit under section 6 of the Act no questions of title arise at all and the only aspect which has to be dealt with is whether the plaintiff was in possession prior to the filing of the suit and has been dispossessed otherwise than in accordance with law. Thus, the real scope of section 6 of the Specific Relief Act is to find out whether the plaintiff has been dispossessed without his consent or in a manner otherwise than in due course of law and if these two ingredients are established the Court dealing with a suit under this section has no other discretion but to restore possession of the land from which the plaintiff has been dispossessed without due process of law.

22. In the instant case, the Applicant seeks restoration of possession of the suit premises. As the building itself was demolished prior to the institution of the suit, in my opinion, the relief of restoration of possession has been rendered infructuous. Upon demolition, the nature of the suit premises has changed and the relief of restoration of possession of the previous premises described in the plaint cannot be granted. The proceedings under Section 6 of Specific Relief Act, 1963 are summary proceedings and

there is no adjudication of title and the alternate relief of direction to provide a permanent alternate commercial premises which is now sought to be pressed, will necessarily involve an adjudication into the entitlement of the Applicant to permanent alternate commercial premises based upon a finding that the Applicant was a tenant of the premises. I am afraid that the scope of Section 6 of the Specific Relief Act does not permit an inquiry of this nature. It needs to be noted that sub-Section (4) of Section 6 does not bar any person from suing to establish his title to such property and to recover possession thereof.

23. The trial Court by the impugned order has observed that the Applicant has admitted in the pleadings as well as in the cross-examination that the original suit premises has been demolished and that in place of the old building there is a new building ground + 15 floors. The trial Court has rightly considered that the relief of restoration of possession has become infructuous and the grant of other relief cannot be considered in the present suit.

24. By way of amendment in the present application, the Applicant had sought a further direction to Respondent to provide

permanent alternate premises and to direct the Respondent no.5 to join the Applicant as member of the newly constructed premises. Considering the scope of Section 6 of the Specific Relief Act the only relief which could have been granted is restoration of possession. However, in the present case, the suit premises itself having been demolished, the decree has been rendered futile as there cannot be a direction for restoration of the suit premises which no longer exists.

25. In view of the above, I do not find any reason to interfere with the impugned order. Revision Application stands dismissed. Needless to clarify that it is open for the Applicant to pursue appropriate legal remedies, if available, in view of the finding of the prior possession of the Applicant in the suit premises.

(Sharmila U. Deshmukh, J.)