

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.183 OF 2021**

Hiya Associates & Ors. ...Applicants

Versus

Nakshatra Properties Pvt. Ltd. ...Respondent

Mr. Y. S. Jahagirdar, Senior Counsel a/w Mr. S.S. Kanetkar, Mr. Yash Dewal for the Applicant.

Mr. Vineet Naik, Senior Counsel a/w Ms. Sheeja John, Ms. Nipa Gupte, Ms. Radhika Nair i/by M.P. Savla & Co. for Respondent.

CORAM : RAJESH S. PATIL, J.

RESERVED ON : 16 OCTOBER, 2023

PRONOUNCED ON : 28 NOVEMBER, 2023

JUDGMENT :

1. This Civil Revision Application filed under Section 115 of the Code of Civil Procedure, challenges the impugned Judgment and Order dated 26 March, 2019 passed by the Appellate Bench of the Small Causes Court which confirmed the impugned Judgment and Order dated 28 October, 2015 passed by Executing Court (Small Causes Court Bombay) below Exhibit No.1 in Executing Application No.31 of 2013 in R.A.E. Suit No.872/1383 of 2007.

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FACTS :

2. Respondent Company is a tenant of Flat No.101, situated in Ratneshwar Temple Building, Mumbai – 400 006 (for short “Suit Flat”).

3. With the consent of landlord of the building in which Suit Flat is situated Respondent Company (tenant) sublet the Suit Flat in favour of Applicant No.1, a partnership firm. Applicant Nos.2 and 3 are the partners of Applicant No.1. At the relevant time, they were also Directors of Respondent Company till 1 July, 2007.

4. On 2 July 2007 there was change in the Board of Directors of Respondent Company, and new Directors were appointed.

5. Shortly, thereafter on 4 August, 2007 Respondent Company filed Eviction Suit on the ground of “change of user” under Section 16(1)(n) of Maharashtra Rent Control Act, against the Applicants, being R.A.E. Suit No.872/1383 of 2007 before the Small Causes Court, Mumbai.

6. On 5 September, 2007, Consent Terms were entered between Respondent Company (as Plaintiff) and Applicants (as

Defendants), in the said Eviction Suit. On the same day the Judge of Small Causes Court disposed of the Eviction Suit in view of the Consent Terms.

7. Later, in the year 2013 the Respondent Company filed Execution Application No.13 of 2013 and sought issuance of warrant of possession in respect of the Suit Flat. By an Order dated 28 October, 2015, the Executing Court allowed the Execution Application of the Respondent Company (Plaintiff).

8. Being dissatisfied, the Applicants/Defendants preferred Revision Application No.333 of 2015, before the Division Bench of Small Causes Court. By an Order dated 26 September, 2016, the Division Bench of Small Causes Court, allowed the Revision Application No.333 of 2015 of the Applicants/Defendants, thereby setting aside the warrant of possession.

9. Respondent Company (Plaintiff) being aggrieved by order of setting aside possession warrant, filed Writ Petition No.6733 of 2017, before this High Court. The said Writ Petition No. 6733 of 2017 of Respondent/Plaintiff, was allowed by this Court by its Order dated 21 July, 2017, thereby confirming the Order of Warrant of Possession.

10. On 12 September, 2017, the Applicants/Defendants filed a Miscellaneous Application under Order 23, Rule 3 of CPC, in Eviction Suit being R.A.E. Suit No.872/1383 of 2007 and sought a declaration that Consent Decree dated 5 September, 2007 be declared as null and void.

11. So also the Applicants/Defendants filed a Civil Appeal Nos.10010 and 10011 of 2018, before the Supreme Court of India challenging the Order passed in Writ Petition NO. 6733 of 2017. By order dated 26 September, 2018, the Supreme Court partly allowed the said Appeals and set aside the Order of the Revision Court and the High Court. Supreme Court directed the Division Bench of Small Causes Court to hear the Revision Application No.333 of 2015 afresh keeping in view the law laid down by Supreme Court in the case of *Roshan Lal and Another V/s. Madan Lal and Others*¹.

12. After the Order of Supreme Court remitting the Revision back before the Division Bench of Small Causes Court, the same was heard. By their Order dated 26 March, 2019, the Division Bench of Small Causes Court, Bombay dismissed the Revision and

¹ AIR 1975 SC 2130

confirmed the Order of warrant of possession, dated 28 October, 2015 passed in Execution Application No.31 of 2013.

13. This Civil Revision Application filed under Section 115 of CPC challenges the Order passed by the Division bench of Small Causes Court in Revision Application No.333 of 2015, which had confirmed the Order of warrant of possession dated 28 October, 2015 passed in Execution Application No.31 of 2013.

SUBMISSIONS :

14. Mr. Y.S. Jahagirdar, Senior Counsel, made submissions on behalf of the Applicants/Defendants as under :-

i) Under the scheme of the Maharashtra Rent Control Act even though a Consent Decree can be passed, but the Court has to be satisfied that one of the grounds for eviction mentioned under the provisions of Section 16 is available and proved. In Other words for a decree of eviction to be passed under the Rent Act, it requires satisfaction of the Court about existence of atleast one the grounds as mentioned under Section 16 of the Rent Act.

ii) The provisions of Maharashtra Rent Control Act being a

special provision and hence even though there is no bar to pass a compromise decree under the Rent Act, the compromise decree to be passed under the Rent Act stands on different footing.

iii) Under the provisions of Section 16 of the Rent Act, even a compromise decree passed by a Court requires satisfaction of the Court about availability and existence of the ground of eviction being made out. The decree passed even by consent, in absence of satisfaction of the Court about the existence of the ground under the Act being made out, is not sustainable and is nullity being contrary to the provisions of law.

iv) It is settled principle that the challenge to a decree which is nullity from the setup even in the collateral proceedings since there is no decree in the eyes of law.

v) In the present proceedings the Suit was filed in August-2007 and immediately September-2007, compromise terms were filed without summons being served and without filing of written statement, even issues were not framed, the Consent Terms were executed for a purpose and were not meant to be acted upon.

vi) Paragraph No.15 of the Complaint merely a declaration relief is sought. What is necessary is not mere declaration of relief but satisfaction about existence of ground to grant such a declaratory relief.

vii) The Courts below did not take into consideration about the fact that Applicants had already filed proceedings challenging the consent decree and therefore, the Eviction Decree could not be executed, pending such an application.

viii) It is settled principle of law that when a decree is contrary to the provisions of law or when the decree is nullity, the same does not bind the parties.

ix) The Court failed to take into consideration that prior to 1 July, 2007 the Directors of the Plaintiff and the Partners of the Defendants firm were common and/or related to each other. And only on 2 July, 2007, when there was change in the Board of Directors of the Plaintiff, thinks change and immediately a Eviction Suit was filed on grounds of “change of user”, which could have never been proved and no decree for eviction on the ground of “change of user” could have ever been passed.

x) The law laid down by the Supreme Court in the case of *Roshan Lal (Supra)*, was not considered by the Revisional Court, as directed by the Supreme Court in its Order.

xi) Therefore, it was prayed that the impugned Judgment and Decree should be quashed and set aside and the Civil Revision Application be allowed.

15. On the other hand Mr. Vineet Naik, Senior Counsel, made submissions on behalf of the Respondent/Plaintiff.

i) The Defendants had agreed to hand over possession by 31 January, 2009, in view of the allegations of “change of user”, the Defendants had consented and undertook not to carry out any activity save and except running of the school.

ii) After the Consent Terms been verified, the same were taken on record by the Trial Court as per the provisions of Order 23, Rule 3 of the CPC and thereafter, the Suit was decreed.

iii) Objections to a consent decree, cannot be considered in the execution proceedings.

iv) The contention of the Applicants that the real

transaction was that of loan and parties never intended to act on consent decree, has no basis whatsoever.

v) Revision was filed against the order of Executing Court on the basis of consent decree. Court executing a decree must take the decree to its tenor, and cannot entertain any objections that the decree was incorrect in law.

vi) Mr. Naik relied upon the Judgment of *K.K.Chari V/s. R.M. Seshadri*² and *Nagindas V/s. Dalpatram*³, in support of his contention.

viii) Mr. Naik submitted that there is no merits in the present Civil Revision Application, and there is a huge outstanding amount of rent pending, therefore, the present Civil Revision Application should be dismissed with costs.

ANALYSIS AND CONCLUSION :-

16. The Supreme Court by Order dated 26 September, 2018 had directed the Revision Court of Small Causes to dispose of the revision, taking into consideration the Judgment of *Roshan Lal (Supra)*.

² (1973) 3 SCR 691

³ AIR 1974 SC 471

17. In this proceedings, Eviction Suit was filed on 4 August, 2007, in the Court of Small Causes, on the ground of “change of user”, which falls under Section 16(1)(n) of Maharashtra Rent Control Act.

18. Mr. Jahagirdar took me through the averments made in plaint as regards allegations of change of user, i.e. in Paragraph Nos. 5, 6 and 7 of the Plaint, which reads as under:

“5. The Plaintiff says that prior to 1st July, 2007 the Directors of the Plaintiff and the partners were common and/or related to each other. However, on and from 2nd July, 2007 there is a change in the Board of Directors of the Plaintiff.

6. The Plaintiff further says that the Defendants were allowed to run a school in the suit premises.

7. The Plaintiff says that reconstituted Board of Directors of the Plaintiff noticed that the suit premises is used by the Defendants for office and other commercial purpose along with running the school. The Plaintiff objected to the said use. However, the Defendants are continuing with the unauthorized use. The Plaintiff says that the said act tantamount to change of user and is contrary to the provisions of the Maharashtra Rent Control Act.”

[Emphasis Supplied]

19. Hence, Specific allegations in the plaint is that the suit premises were given for the purpose of running school however the suit premises were used as office and also for other commercial purposes therefore, there was change of user of suit premises. In the Judgment of ***Dattatray Ramchandra Sapkal V/s. Gulabrao***

Tukaram Bhosale⁴, Paragraph Nos. 12 and 13 reads as under :

12. Now, the words of s. 13(1)(a) of the Bombay Rent Act indicate that the Legislature has referred in cl. (a) of s. 13(1) to an act contrary to the provisions of cl.(o) of s. 108. The effect of s. 13(1)(a) is that the provisions of cl. (o) alone are deemed to be incorporated as a part of the provisions of s. 13(1) of the Rent Act. The intention of the Legislature was very clear as would be apparent from the scheme reflected in the provisions of ss. 12 and 13 of the Rent Act. An absolute bar was created by s. 12 against the landlord in respect of recovery of possession of premises from the tenant provided the tenant pays or is ready and willing to pay the amount of standard rent and permitted increases and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of this Act. Section 13(1) no doubt operates notwithstanding the provisions of s. 12; but that only means that the right to recover possession which was taken away is made available to the landlord only in certain statutorily prescribed circumstances. One such circumstance referred to in s. 13(1)(a) of the Bombay Rent Act is that the change of user is now permitted to be made a ground for eviction. The Legislature has clearly indicated that change of user must be a change of user as contemplated by cl. (o) of s. 108 of the Transfer of Property Act. A change of user which does not fall within cl. (o) of s. 108 of the Transfer of Property Act could not be availed of by the landlord. If that was the intention of the Legislature, on reading Ss. 12 and 13 together, the question of any agreement between the parties in regard to the user of the premises would not be relevant.

13. Apart from this, it is also difficult to accept the contention that merely because instead of fret-work business the defendant took to the business of dealing in plastic goods, it amounted to a change of user. In both cases the premises are used for business purposes. Change in the nature of business need not necessarily in all cases result in the change of user for which the premises are used.

4 1977 SCC OnLine Bom 95

20. In the present proceedings, immediately after filing of the Suit on 4 August, 2007, in one month Consent Terms dated 5 September, 2007 were entered into between the parties. The said consent terms recorded that defendant is served with writ of summons and he has agreed to evict the premises by 31 January, 2008. It was further recorded that in case the premises is not evicted by 31 January, 2008, the defendant will be liable to pay compensation.

21. In paragraph No.5 of the Plaint, it is averred that the Directors of the plaintiff and the partners of the tenant firm were common or related to each other prior to 1 July-2007, and it is only on 2 July, 2007 the new Directors were inducted in the plaintiff company, shortly thereafter, a Suit for Eviction was filed.

22. The Maharashtra Rent Control Act is a beneficial legislature for the tenants. Section 16(1) of the Maharashtra Rent Control Act permits a landlord to file Eviction Suit on certain grounds. The said Sub-section 1 of Section 16 reads as under :

16. When landlord may recover possession

(1) Notwithstanding anything contained in this Act but subject to the provisions of Section 25, a landlord shall be entitled to recover possession of any premises if the Court is satisfied -

[Emphasis supplied]

23. Order 23, Rule 3 of the Code of Civil Procedure, 1908 reads as under :-

*“3. **Compromise of suit.**—Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise [in writing and signed by the parties] or where the defendant satisfied the plaintiff in respect to the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith [so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit:]*

[Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but not adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.]”

[Emphasis supplied]

24. Hence, the satisfaction of the Court would always be necessary in passing the Eviction Decree against the tenant, and if the Court is not satisfied a Decree of Eviction cannot be passed. There is no doubt that in a Eviction Suit under the Maharashtra Rent Control Act, Consent Terms can be filed between the parties. However, even for filing consent terms it will be necessary that the Court is satisfied before passing of a Decree of Eviction.

25. The Revisional Court while deciding the revision, even though have referred to the Judgment of ***Roshan Lal (supra)*** but have not specifically recorded reasons as contemplated by Supreme Court in Paragraph Nos. 5 and 7 of the Judgment of ***Roshan Lal (supra)***.

25.1. Paragraph Nos. 5 and 7 of ***Roshan Lal (supra)*** reads as under :

“5. In order to get a decree or order for eviction against a tenant whose tenancy is governed by any Rent Restriction or Eviction Control Act the suitor must make out a case for eviction in accordance with the provisions of the Act. When the suit is contested the issue goes to trial. The court passes a decree for eviction only if it is satisfied on evidence that a ground for passing such a decree in accordance with the requirement of the statute has been established. Even when the trial proceeds ex parte, this is so. If, however, parties choose to enter into a compromise due to any reason such as to avoid the risk of protracted litigating expenses, it is open to them to do so. The Court can pass a decree on the basis of the compromise. In such a situation the only thing to be seen is whether the compromise is in violation of the requirement of the law. In other words, parties cannot be permitted to have a tenant's eviction merely by agreement without anything more. The compromise must indicate either on its face or in the background of other materials in the case that the tenant expressly or impliedly is agreeing to suffer a decree for eviction because the landlord, in the circumstances, is entitled to have such a decree under the law.”

7. We now proceed to consider the facts of the case on hand.

The ground for eviction from the accommodation let for non-residential purposes mentioned in clause (f) of Section 12(1) of the Act is that the accommodation is required bona fide by the landlord for the purpose of continuing or starting his business...and that

the landlord...has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned.

In paragraph 3 of the plaint the respondents necessity was pleaded both in the positive and the negative aspects of clause (f). Both were denied in paragraph 3 of the written statement of the appellants. Paragraph 1 of the compromise petition says :

That due to the necessity of the plaintiffs for their own business – opening grocery shop, decree for ejectment may be granted to them against the defendants.

In this case it is not necessary to refer to any piece of evidence adduced at the inconclusive trial. The meaning of paragraph 1 of the compromise petition is clear and definite especially in the background of the pleadings of the parties and in our opinion it squarely makes out a case of eviction within the meaning of Section 12(1)(f) of the Act on admission of the appellants. We reject the argument of Mr. Andley, learned Counsel for the appellants, that paragraph 1 of the compromise petition was an admission in respect of only the first part, namely, the positive aspect of clause (f) and not of the second part, namely, that the landlord has no other reasonably suitable non-residential accommodation. The admission, by necessary implication, was in respect of both.”

[Emphasis supplied]

26. The Judgment relied upon by Mr. Naik, of ***K.K. Chari (supra)*** and ***Dalpatram (supra)*** have been considered in the later Judgment of ***Roshan Lal (supra)*** by Supreme Court.

27. In the impugned judgment, the Revision Court has not discussed and given its reason, as to whether Executing Court was satisfied about existence of atleast one of the grounds as mentioned under the Section 16 of the Maharashtra Rent Act,

taking into consideration the law laid down by Supreme Court in *Roshan Lal (Supra)*.

28. I am of the view that the Revisional Court has not followed the directions given by the Supreme Court in its Order dated 26 September, 2018, therefore, this Civil Revision Application deserves to be allowed with the following directions.

(i) Impugned Judgment and Order dated 26 March, 2019 passed by the Division Bench of the Small Causes Court, Mumbai is hereby quashed and set aside.

(ii) The Revision Application No.333 of 2015 is hereby restored to file and the Division Bench of Small Causes Court, should hear the Revision Application afresh on merits on the basis of documents, which are already on record.

(iii) It is made clear that the Division Bench of Small Causes Court should strictly here and dispose of the revision on the basis of directions given by the Supreme Court in its Order dated 26 September, 2018.

(iv) It is made clear that no further documents will be allowed to be filed by the parties.

(v) The Division Bench of Small Causes Court should dispose of the revision expeditiously and should make an endeavour to dispose of the revision within a period of three months from today.

(vi) Parties should cooperate with the hearing of the Revision Application and should not seek unwanted adjournments at the hearing of the Revision Application.

29. All concerned to act on an authenticated copy of this order.

(RAJESH S. PATIL, J.)

30. At this stage Ms. Siddhi Chavan, learned counsel appearing for the Respondent seeks stay of this Order. Request is rejected.

(RAJESH S. PATIL, J.)