

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

CIVIL REVISION APPLICATION NO.286 OF 2021

Naresh Jayantilal Doshi ... Applicant

V/s.

Dattatray Sawlaram Shedge & Ors. ... Respondents

Mr. Rashid Khan i/b Mr. Rakesh Kumar Singh a/w Saya Suresh Babu, Advocate for the Applicant.

Mr. Ameya Kulkarni i/b Mr. Shivam P. Srivastav, Mr. R. Y. Sirsikar MCGM, Advocate for the Respondents.

CORAM : RAJESH S. PATIL, J.

DATED : 26 OCTOBER 2023

P.C.:

1. This Civil Revision Application is filed under Section 115 of the Code of Civil Procedure, 1908 challenging impugned Judgment and Order dated 13 May, 2021 passed by the Division Bench of the Court of Small Causes, as well as judgment and order dated 4 May, 2017 passed by the Single Judge of the Court of Small Causes in Obstructionist Notice No.794 of 2015.

2. One Mr. Dattatray Sawlaram Shedge, claimed to be a tenant of a shop no.1 admeasuring 10 ft. x 15 ft., situated on the ground floor of 49/A, Elphinstone House, Jagannath Bhatkar Marge, Mumbai 400 013(for short “suit shop”).

3. It was the case of Mr. Shedge that after an earlier eviction suit been decreed against his uncle Mr. Namdeo Shedge, fresh tenancy for suit shop was created in his favour by he depositing a sum of Rs.1 lac and three months rent with the then landlord. Accordingly, rent receipt dated 9 February, 1992 was issued to him. He had accordingly obtained electricity connection in his name after creation of the new tenancy in his favour. According to him, the rent for suit shop was accepted till 11 July, 1999.

4. MHADA issued notice dated 9 July, 1994 to the occupiers, informing the estimated expenses of repairs of the old building in which the suit shop was situated. Hence, an agreement dated 19 July, 1995 was entered into between the tenant and the landlord that the repairs would be carried out by MHADA and thereafter possession of the suit shop to be given back to tenant.

5. Pursuant to which the suit shop was handed over to the landlord so that the repairs can be completed by MHADA. The MHADA accordingly carried out the repairs. After the repairs were completed, the tenant issued notice to the landlord on 16 November, 2006 seeking possession of the suit shop. However, the landlord denied their liability to handover the possession of the suit shop.

6. The earlier landlord thereafter filed a suit for injunction in the City Civil Court of Bombay being Suit No.2051 of 2007. The said suit was however, the withdrawn by the earlier landlord. Thereafter since the possession of the repaired premises was not handed over to the tenant / Mr. Dattatray Sawlaram Shedge, he

filed R.A.D. & E. Suit No.1059 /1725 of 2007, for declaring him as a tenant and seeking possession of the suit shop.

7. The said R.A.D. & E. suit was decreed by judgment and decree dated 19 December 2014, thereby directing the landlord to hand over vacant possession of the suit premises to the tenant within three months.

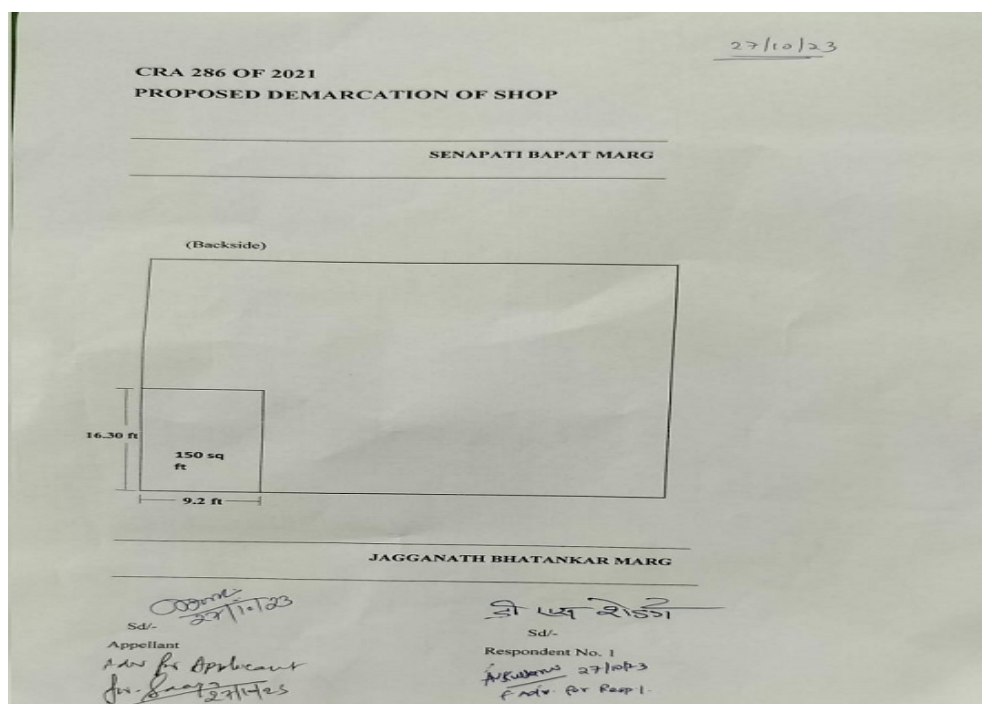
8. As the landlord did not comply with the directions in the judgment and decree dated 19 December, 2014, an Obstructionist Notice No.794 of 2015 was filed by the tenant. The said obstructionist notice was decided by judgment and order dated 4 May, 2017 thereby the obstructionist notice was made absolute and the Obstructionist No.3 / the Applicant herein was directed to carve out an area of 10 ft x 15 ft area on the ground floor of the suit building and put the plaintiff in possession thereof, as per the decree passed in R.A.D & E. Suit No.1059 /1725 of 2007, within three months. As far as mesne profits / compensation was concerned the tenant was granted liberty to file separate proceedings.

9. The landlord / the Applicant herein thereafter, being dissatisfied, filed an appeal before the Division Bench of the Court of Small Causes at Bombay being Appeal No.22 of 2018. The said Appeal was dismissed by the Division Bench of this Court by judgment and order dated 13 May, 2020.

10. As the Appeal No.22 of 2018 was dismissed, time of three months was granted to the landlord to hand over possession of the suit shop admeasuring 10 ft x 15 ft.

11. Both the orders passed in the obstructionist notice have been challenged in this Civil Revision Application by the landlord. After the matter was heard for some time, the counsel for the Applicant landlord, upon instructions of his client Mr. Naresh Jayantilal Doshi, who is present in this Court has agreed and undertaken to comply with the direction of the executing Court, passed in order dated 4 May, 2017 and as confirmed in order dated 13 May, 2021, by carving out a portion of 10 ft x 15 ft as shop premises on the ground floor of the building known as 49/A, Elphinstone House, Jagannath Bhatkar Marg, Mumbai 400 013 within three months from today. The said construction will be of reasonable standard.

12. For convenience, parties have handed over diagram of the proposed shop premises which will be handed over to the Respondent No.1, the same is signed by parties and their Advocates. For easy of reference, the same is reproduced herereinbelow.



13. The respondent No.1 / tenant has succeeded in the R.A.D. & E. Suit and also in the obstructionist notice, so also this Court has confirmed those orders, the Advocate for the Municipal Corporation Mr. R. Y. Sirsikar hereby gives assurance on behalf of Corporation to this Court that the corporation will fully co-operate with the landlord Mr. Naresh Jayantilal Doshi in complying with the direction given by this Court.

14. As far as proposed Application of Respondent No.1 for mesne profits, and delay condonation application along with appeal filed by the landlord are concerned, this Court has not observed anything on those proceedings and the same will be decided on their own merits.

15. Marji Application No.2 of 2022, filed before the Division Bench of Court of Small Causes for withdrawal of the amount deposited by the landlord was disposed of by order dated 12 June, 2023. The order dated 12 June, 2023 read as under.

“Resumed Applicant present, adv for applicant absent. Respdt no.1 absent, adv for respdt no. 1 present. Final order pronounced in the open court. The amount of interim compensation deposited by the appellant/obstructionist no.2 in Execution Application No.22 of 2018 be continued to be kept in the Fixed Deposit as per rules, until final outcome or further directions of the Honorable High Court. MARJI stands disposed of accordingly.”

15.1 This Court further clarifies that the Respondent No.1 (Mr. Dattatray Sawlaram Shedge) is hereby permitted to withdraw the entire amount along with accrued interest deposited by landlord in

application being order below Exhibit-6.

16. Mr. Khan on instructions on his client / landlord has fairly stated that there is certain arrears on part of landlord in depositing Rs.10,000/- per month. Mr. Khan further states that on instruction of his client that the balance outstanding amount his client will directly pay by way of cheque / on line payment to Respondent No.1 Mr. Dattatray Sawlaram Shedge within a period of two weeks from today.

17. The assurances given by parties as mentioned in above paragraphs are accepted as undertaking given to this Court. Civil Revision Application is accordingly disposed of.

(RAJESH S. PATIL, J.)