

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

WRIT PETITION NO.11561 OF 2023

Bhagwan Ramchandra Zore And Ors ...Petitioners

V/s.

Dolat Doonangi Decd. And Ors ...Respondents

Amol
Diliprao
Nawale

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Mr. Karan Bhosale a/w. Ms. Unnati Ghia a/w. Mr. Datta Mane for
the Petitioners.

Mr. Avinash Joshi & Mr. Nilesh Patil for the Respondents.

CORAM : RAJESH S. PATIL, J.

RESERVED ON : 26 SEPTEMBER 2023

PRONOUNCED ON 3 OCTOBER 2023

JUDGMENT :

1. This Writ Petition is filed under Article 227 of the Constitution of India, challenging the concurrent findings recorded by the Judge of Small Causes Court at Mumbai and by the Appellate Bench of the Court of Small Causes at Mumbai.

2. The Petitioners are original defendants against whom eviction suit was filed by the Respondent as trustees of trust which runs a school in the city of Mumbai called as 'Activity High School', under the provision of Section 41 of the Presidency of Small Cause Court Act.

3. It is the case of the Original Plaintiff Trust that

defendant No.1, who is Petitioner No.1 in this Writ Petition was a peon working in the school. The said Defendant No.1 was allowed to reside in two rooms on the second floor of the school building as a Gratis, along with his family members, i.e., Defendant Nos.2 to 5.

4. It is the case of the Plaintiff that the daughters of Defendant No.1 and 2 were admitted into the School of the Plaintiff and were given free education from montessori. It is further their case that the Defendants were allowed to reside in the suit premises without paying any amount of rent/compensation to the Plaintiff Trust, only on humanitarian grounds. It is also further their case that they had in fact helped the Defendants Nos. 1 to obtain alternate accommodation and so also they paid consideration of the alternate accommodation. However, the Defendant No.2 sold the said alternate premises and did not vacate the suit premises. As the conduct of Defendant No.1 was not proper, the plaintiff vide their letter dated 1 August, 2007, terminated the services of Defendant No.1. The Defendant No.2 on 9 July, 2007 informed the plaintiff trust that the alternative accommodation provided to them, has been sold by them. Thereafter, the plaintiff issued a notice dated 16 July, 2007 calling upon the Defendants to vacate the suit premises. However, as the suit premises were not vacated, the Plaintiff on 14 July, 2010 filed a suit of eviction under Section 41 of the Presidency Small Causes Court Act, against all the Defendants, on the ground that the suit premises were required by the school, for expansion.

5. The Defendant No.1 filed written statement to the said

suit thereby denying all the submission made in the Plaint. The Defendant also stated in the said written statement that she has filed written statement on behalf of all the defendants.

6. After issues were framed evidence was laid on behalf of the plaintiff by their Trustee. On behalf of the Defendant, only defendant No.2 entered the witness box and gave her evidence. Thereafter, the matter was heard by the Judge of Small Causes Court and by his Judgment and Order dated 4 February, 2023 the eviction suit of the Plaintiff was decreed, thereby directing the Defendants to vacate the suit premises.

7. The Defendants filed an Appeal challenging the Judgment and Order dated 4 February, 2023, before the Appellate Bench of Court of Small Causes at Mumbai. The said Appeal was heard by the Division Bench of the Court of Small Causes and by their Judgment and Order dated 14 July, 2023 dismissed the Appeal filed by the Defendants.

8. The said concurrent findings of both the Courts have been challenged by this Writ Petition by the Original Defendants.

9. Mr. Karan Bhosale made his submissions on behalf of the Petitioners. He submitted that the tenancy of Defendant No.2 was in perpetuated. He submitted that the agreement dated 5 August, 1987 produced by the Plaintiff was a forged and fabricated document. The Defendants had never signed the said documents. He further submitted that before filing the present eviction suit, the Plaintiff had filed a suit in the Court of City Civil at Bombay, and the said suit was dismissed. He submitted that about the

agreement dated 5 August, 1987, there was no whisper in the Plaintiff. He submitted that a suit was not maintainable because the Defendants was not gratuitous licensee. He submitted that both the Courts had erred a passing concurrent findings of requirement in favour of the Plaintiff trust. He submitted that apart from the present Defendants there were other tenants in the school building. He submitted that the present Civil Revision Application requires to be admitted.

10. Mr. Bhosale, to buttress his submission, relied upon two judgments viz : a) **Moosabhai Khetari v/s. Rahim Kaba**, in Execution application NO.356 of 2021, decided by Single Judge of this Court on 13th July, 2022. b) **Haren Mehta Vs. Kamla Nebhanani** reported in **2001 (2) Mh. L.J. 45**.

11. On the other hand, Mr. Avinash Joshi made submissions on behalf of the Educational Trust/Respondents. He submitted that by well reasoned judgment and order the both courts below had passed decree in favour of the trust, and this Court under its jurisdiction of Section 115 of the Code of Civil Procedure, 1908 should not disturb the concurrent finding recorded by both the Courts. He submitted that the Plaintiff trust out of humanitarian grounds had even given an offer of an alternate accommodation to the Defendants. However, the Defendants sold the alternate accommodation and did not vacate the suit premises. He submitted that the Plaintiff trust was running a school and inside the school, the Defendants were residing unauthorized. He submitted that notice of termination of service was given to Defendant No.1, due to his conduct and thereafter

notice was given to Defendant No.1 to vacate the suit premises. He submitted that the Defendant No.2 at her counts has informed the Plaintiff that they have sold the alternate premises. He submitted that the Defendants are a source of nuisance to the school. He further submitted that in fact the Original Tenant Defendant No.1 was not interested in keeping the premises with him and in fact he wanted to vacate the suit premises. He submitted that the present Writ Petition should not be entertained and the same should be dismissed.

12. I have heard counsel for both the sides and have gone through the contents of documents produced before me.

13. The Plaintiff has filed suit under Section 41 of the Presidency of the Small Causes Court Act on the ground that the suit premises is in this school building and they needed to expand the activities of the school. The Defendant No.1 was a gratuitous licensee. Therefore, the Defendant No.1 was allowed to stay with his family and he did not pay any rent to the school. Defendant Nos.3 to 5, studied in Plaintiff's school, without paying any fees.

14. From the argument made before me, it has been submitted by the Defendant/Petitioner that no rent was paid by the Defendant to the Plaintiff. Therefore, according to me, the case of the Plaintiff that the Defendant No.1, was a gratis is proved.

15. To that effect, both the courts have held that the Defendant No. 1 is a gratuitous licensee. It is a matter of record that the Defendant No.1 does not stay in the suit premises and he

stays in his native place.

16. The Defendant No.2 by her Letter dated . 9 July 2007 (Exh. 98) has informed the plaintiff Trust that she has sold the alternate premises which was given to them by the Plaintiffs. It is pertinent to note that the Plaintiff on the request made by the Defendant, granted to the Defendant No.1 an alternate premises. However, the Defendant chose to sell the said premises and to keep on occupying the Suit Premises in the school building on the second floor.

17. I have gone through the evidence of the Plaintiff Witness. In the said evidence, the Plaintiff Witness has pleaded the case as stated in the Plaint and Agreement dated 05 August 1987 was proved. As per the clauses of the said Agreement (Exh. 60), the Defendant No. 1 was supposed to vacate the premises as and when he would be asked by the Trust. Admittedly, by a notice dated 16 July 2007, the Plaintiff Trust had called upon the Defendant to vacate the Suit Premises. The said notice to vacate also reminded the Defendant about the letter dated 18 December 1999 addressed by Defendants to the Plaintiff, wherein, in Paragraph No. 6 it was stated that they undertake that on shifting to the Transit Camp or any alternate place, or on receiving a loan of Rs. 2,00,000/- they will hand over quiet and peaceful possession of the present premises of the suit building.

18. The Defendant No. 1 himself never entered the Witness Box; it was only the Defendant No. 2 (wife of Defendant No.1) who entered the Witness Box. In fact, the Written Statement is

filed by the Defendant No. 2 on behalf of all the Defendants. In her cross examination, the Defendant No. 2 changed her stand when she was put to question about the alternate premises. She mentioned that in fact she had not sold the alternate premises and it was falsely mentioned in her letter dated 9 July 2007 that she has sold the alternate premises. The Defendant No. 2 has been changing her stand as per her convenience.

19. The judgment of Haren Mehta (*supra*) referred by the Petitioner does not help the cause of Petitioner, as in the present proceedings, the Agreement dated 5 August 1987, has been exhibited and questions were asked to witness on the said document. And even if the said document was not on record, the Plaintiffs had a right to terminate its gratuitous licensee. Similarly, in the matter of Moosabhai (*supra*), it was held that whether the Applicant was a gratuitous licensee or otherwise, is a question of fact that has to be first pleaded and thereafter established. Again this judgment does not support the Petitioners, as in the present proceedings, there are specific averments that Defendant No.1, was a gratis.

20. This Hon'ble court in the judgment of **Bandu Nikam v/s. Acharyaratna Deshbushan Shkshan Prasark Mandal, Kolhapur** reported in **(2003) 3 Mha LJ 472** held that since the landlord is a trust the requirement in the pleading would be much different then that of any other landlord, who is not a public trust. What is required to be pleaded by a trust is only that the premises are required for occupation for the purposes of the trust and nothing more. Similarly, in the judgment of **S. B. Gaikwad v/s. Iyer**

Subramanya Venkateswara reported in (1990) 3 Bom CR 736, this Court held that while considering comparative hardships, the offer of alternate premises to the tenant has to be considered. Attitude adopted by the tenant in refusing to consider the offers made by the Landlord, is a conduct which is sufficient to lead to an inferences that this is not a fit case for inferences in Writ Jurisdiction. The ratio laid down by these judgments are squarely applicable to the present proceedings.

21. I find there is no perversity in the impugned judgment of the Single Judge and the Appellate bench of the Small Causes Court. No case is made out to interfere with the concurrent findings of both the Courts. The Civil Revision Application is accordingly dismissed. No costs

22. The Petitioners are granted six weeks to vacate the suit premises and hand over the same of the Respondents, subject to filing of usual undertaking to filed by all the Petitioners within one week from today. The undertaking it should also contain that the nobody else is occupying the suit premises, except the Petitioners. Further it should also contain that they will not create any third party interest in the suit premises.

24. If the undertakings are not filed within one week, the Respondents are permitted to execute the decree of possession. In such situation the local police will assist the Respondents to execute the decree.

(RAJESH S. PATIL, J.)