

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 561 OF 2023**

Shri K. Ananth Kumar Nadar,
S/o Kottala Muthu Nadar,
Age about : 41 years,
Residing at 240, Main Road, Sawyer Puram,
Post Tuttukudi, Tamil Nadu – 658 241
Aged about 41 years, Occu: Business,
Indian Inhabitant, Permanent R/o.
Tamil Nadu & Presently R/o. Room No.37,
Panchsheel Nagar, Vijay Nagar Pipe Line,
Andheri(E), Mumbai – 400 059

...Applicant
(Original Defendant)

Versus

1. S. Gopinathan,
Indian Inhabitant of Mumbai,
Aged about 64 years, Occu: Service,
R/o. L/T-6/2, Vijay Nagar,
Marol Maroshi Road, Marol, Andheri(E),
Mumbai – 400 059
(Deleted since Deceased)

...Respondent
(Original Plaintiff)

- 1(a). Mr. Adnan Gopinathan,
Aged about 45 years, Occu: Service,
having address at Indraprasth,
Karinganoor, Kollam District,
Kerala State – 691 516 (India)

...Respondent
(Original Plaintiff)

Mr. Sripad P. Ramdasi for the Applicant.
None for Respondents.

CORAM : RAJESH S. PATIL, J.

RESERVED ON : 19 OCTOBER, 2023

PRONOUNCED ON : 29 NOVEMBER, 2023

JUDGMENT :

1. This Civil Revision Application is filed under Section 115 of the Code of Civil Procedure (for short 'CPC'), challenging the Judgment and Order dated 6 May, 2016, passed by Small Causes Court, Bombay in L.E.& C. Suit No.62/101 of 2017, confirmed by Appellate Bench of Court of Small Causes by its Judgment and Order dated 4 September, 2023 passed by the in Appeal No.25 of 2017.

FACTS :

2. The Applicant is the Original licensee of land with the structure standing thereon bearing C.T.S. No.93 (part) of Village Marol, Taluka Andheri (East), Mumbai – 400 059, admeasuring 880 sq. feet or thereabout (for short 'Suit Premises'), pursuant a Leave and Licence Agreement dated 19 March, 2005. The Respondents are the Legal heirs of one Mr. S. Gopinathan who was the licensor of the Suit Premises.

3. By a registered Leave and Licence Agreement dated 19 March, 2005, the Suit Premises was given on licence basis for a period of 22 months w.e.f. 1 May, 2005. The Applicant was

supposed to pay a sum of Rs.1,500/- per month as licence fee for commercial use of the Suit Premises.

4. It is a case of the licensor that the licensee was regular in paying the licence fee till 28 February, 2007. On the expiry of the licence period, the licensee filed to vacate the Suit Premises, therefore, the licensor filed a Suit bearing No. L.E. & C. No.62/101 of 2007, before Court of Small Causes at Bombay under Section 41 of the Presidency Small Causes Court Act, against the licensee, seeking therein possession of the Suit Premises and also to pay the plaintiff a sum of Rs.12,000/- being arrears of compensation/damages from 1 March, 2007 till 31 October, 2007, and further an enquiry under the provisions of Order XX, Rule 12 of CPC for mesne profits, and also during the pendency of the Suit the defendant be ordered to deposit a sum of Rs.12,000/- per month, till the date of recovering vacant possession.

5. The licensee appeared in the eviction proceedings and filed his Written Statement, thereby denying the contention that the licensor is the owner of the Suit Premises and further the premises falls under slums, therefore, a permission has contemplated under Section 22 of the Maharashtra Slum Areas

(Improvement, Clearance And Redevelopment) Act, 1971 was not taken and therefore, the Suit was liable to be dismissed.

6. On behalf of the Plaintiff, the Original licensor entered the witness box and gave his evidence. On behalf of the defendant the licensee (Applicant herein) entered the witness box to lead evidence on behalf of the defendant.

7. After hearing both the parties and taking into consideration the evidence on record, the Single Judge of the Court of Small Causes, by his Judgment and Order dated 6 May, 2016, decreed the Suit, thereby directing the defendant to hand over the vacant and peaceful possession of the Suit Premises to the Plaintiff/Licensor, within two months, and further held that Plaintiff is entitled to recover arrears of compensation at the rate of Rs.1,500/- per month for the period from 1 March, 2007 to 31 October, 2007. And further held that Plaintiff is entitled to make an enquiry into the mesne profits.

8. Being dissatisfied with the Judgment and Order dated 6 May, 2016 passed by the Single Judge of the Court of Small Causes, the licensee/Applicant herein filed an Appeal bearing

No.25 of 2017 before the Appellate Bench of the Court of Small Causes at Bombay.

9. Division Bench of Small Causes after hearing the parties, by their Judgment and Order dated 4 September, 2023, dismissed the Appeal of the licensee/Applicant herein, and confirmed the Judgment and Order dated 6 May, 2016, passed by the Single Judge of the court of Small Causes.

10. The Applicant herein, who is the licensee and Original defendant, in the Eviction Suit, has filed the present Civil Revision Application, challenging the concurrent findings of both the Courts of Small Causes at Bombay.

SUBMISSIONS :

11. Mr. Sripad P. Ramdasi, made his submissions on behalf of the Applicant/licensee.

11.1. Mr. Ramdasi submitted that there is a manifest error on the part of both the Courts of Small Causes, as they have not considered the legal provisions in proper perspective.

11.2. Mr. Ramdasi further submitted that both the Courts lost

sight to the fact that licensee had already handed over possession of the Suit Premises to the licensor, therefore, there could not be any Order of vacating the Suit Premises and paying the compensation for the Suit Premises.

11.3. Mr. Ramdasi further submitted that in fact the Applicant was entitled to receive back the rent whatever was deposited by the licensee in the Court. Mr. Ramdasi submitted that the description of the Suit Property is not proper in the plaint as well as in the evidence, therefore, the Eviction Suit should have been dismissed on these grounds alone. Mr. Ramdasi further submitted that the licensee was not in occupation of the Suit Premises therefore, the ingredients of Section 41 of the Presidency Small Causes Court Act is not attributed.

11.4. Mr. Ramdasi submitted that licensor was not the owner of the Suit Premises on the date of the filing of the Eviction Suit.

11.5. Mr. Ramdasi submitted that the brother of the licensee, had in fact entered into an agreement of purchase the Suit Premises from the Original licensor, and part payment of the said transaction was already received by the licensor. Therefore,

Eviction Suit by a person who had already sold the Suit Premises, was not maintainable. Mr. Ramdasi submitted that therefore, the present Civil Revision Application should be admitted and stay should be granted to the execution of the impugned Judgment and Order.

ANALYSIS :

12. It is an admitted fact that the Applicant was a licensee for a period of 22 months, pursuant a Leave and Licence Agreement dated 19 March, 2005, on monthly compensation of a Rs.1,500/- with security deposit of Rs.25,000/-.

13. Admittedly, the licence period expired on 28 February, 2007. It is a case of the Applicant that he had vacated the Suit Premises and handed over the possession to the Respondent licensor on June, 2005. It is further case of the Applicant that his elder brother had entered into a Purchase Agreement of the Suit Premises with the licensor. And pursuant to the said transaction part payment was already made to the licensor.

14. Both the Courts of Small Causes have held that the Applicant was not able to prove that he had already handed over

possession of the Suit Premises to the licensor. It is also held by both the Courts that as regards ownership of the Suit Premises is concerned, the Applicant was not able to prove that the licensor is not the owner of the Suit Premises. As regards the case of the Applicant that the elder brother had purchased the Suit Premises from the licensee, no such Sale Deed has been produced on record by the Applicant to prove his case. Even, while arguing the Civil Revision Application, the Applicant was not able to show any document to prove that the licensor was not the owner of the Suit Premises.

15. It is not the case of the Applicant that the Suit for specific performance has been filed by the brother of the Applicant against the licensor. In a Suit filed under Section 41 of the Presidency Small Causes Court Act, once it is admitted that there was a registered Leave and Licence Agreement and the licence period had expired, the licensee has to vacate the Suit Premises and hand over the possession to the licensor. Section 41 of Presidency Small Causes Court Act, contemplates Suits between licensor and licensee, relating to recovery of possession and licence fee. It does not mention about ownership of licenced premises. The case of the

Applicant that he has already handed over possession, has not been proved by the Applicant, by bringing on record any kind of document to show that possession has been handed over. In fact, in evidence, the Applicant admitted that he is assisting his brother in the business of selling vegetables from the Suit Premises. This statement of the Applicant in evidence, proves the fact that the Applicant is in possession of the Suit Premises. The Applicant was also not able to prove that the Suit Premises falls under notified slums.

16. Therefore, I find no fault in the concurrent findings recorded by the Small Causes Court, and there is no reason shown by the Applicant to interfere with the concurrent findings. Therefore, no case is made out by the Applicant, hence, the Civil Revision Application is dismissed. No costs.

(RAJESH S. PATIL, J.)