

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

CIVIL REVISION APPLICATION NO.57 OF 2023

Abdul Razzak Shaikh Baban and Anr. ...Applicants.

V/s.

Navrangidevi Sabulal Gupta & Others. ...Respondents.

Ms. Shabana Sothe i/b S. P. Associates for the Applicants.
Mr. Mohit Darji i/b Mr. O. R. Tiwari for the Respondent.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 29th NOVEMBER, 2023.

P.C.:

1. Civil Revision Application has been filed taking exception to judgment dated 11/10/2022 passed by the appellate Bench of the Small Causes Court upholding the judgment and decree of Small Causes Court in RAE Suit No.685/2008.

2. The Suit was for recovery of arrears of rent, eviction and possession of the suit premises. Suit premises was described in the plaint as tenement situated on the rear side of another tenement which is occupied by the revision applicant and is part of Chawl known as Sabbulal Kaluram Gupta Chawl which consists of two shops and two residential tenements out of which one tenement is stated to be in possession of the applicant as the

tenant. Respondent-plaintiff is the landlord and it was his case that the tenanted premises was let out to the applicant on a monthly rent of Rs.20/- and as applicant was in arrears of rent for a period from March 1989 to May 2003 the tenancy was terminated. In addition, it was contended that the tenant had raised height of the suit premises and carried out alterations of permanent nature. The Suit came to be resisted by the applicant by filing written statement denying the case of the plaintiff. The trial Court by judgment dated 30/3/2015 decreed the suit and directed the defendant *inter alia* to deliver vacant possession of the suit premises to the plaintiff. As against which appeal came to be dismissed *vide* judgment dated 11/10/2022.

3. Pivotal point for consideration before this Court is the defence of the applicant that the land upon which the suit premises is situated is declared as slum under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act 1971 (for short, Slum Act). The defence in the written statement is that RAE Suit No.685/2008 was not maintainable without prior permission of the competent Authority under Section 22 of the Slum Act.

4. Heard Ms. Shabana Sothe i/b S. P. Associates for the Applicants

and Mr. Mohit Darji for the Respondent.

5. Ms. Sothe, learned counsel appearing for the revision applicant has pressed into service the submission as regards the prior permission of the competent Authority under Section 22 of the Slum Act. She would submit that in the plaint, a false declaration has been made that the suit premises is not covered by the Slum Act, which is contrary to the Notification issued by the Slum Authority in respect of the suit premises, which according to her, is situated on CTS No.858 to CTS No.860. She places reliance on the Notification of the Year' 1977 which is annexed at page 199 of the compilation of documents and would submit that Survey No.51 was given CTS No.858 to CTS No. 860 which is demonstrable from the communication dated 17/3/1990 addressed by the Collector annexed at page 177 of the compilation of documents. She has further taken this Court to the findings of trial Court and would urge that despite sufficient evidence being on record the issue as regards the defence of Section 22 of Slum Act has been negated by the trial Court.

6. Considered the submissions and perused the record.

7. The only issue which is placed for consideration before this

Court is that the suit itself was not maintainable as the premises was declared as slum by Notification of the year 1977 and as such in view of Section 22 of the Slum Act the suit could not have been filed without prior permission of the Competent Authority. The trial Court has framed the issue of maintainability as Issue No.9. Perusal of the judgment of the trial Court would indicate that in support of the contention the applicant had examined one Abdul Razak Baban DW-1. The judgment indicates that DW-1 has specifically deposed as regards the survey number and the CTS number of the suit premises. The deposition appears to be that the suit premises is situated in an area which is declared as slum by the Notification of 30/10/1977. In the cross examination, DW-1 has deposed that according to him the suit premises falls in CTS No.871 which is changed to CTS No. 858 to 860. Pertinently, no document was produced on record to demonstrate firstly that Survey No.51 has been given CTS No.858 to 860 which is the submission canvassed before this Court. The evidence of DW-1 would indicate that according to him suit premises falls under CTS No.871 which was changed from CTS No. 858 to CTS No.860.

8. The trial Court did not accept the evidence produced on record in the form of Notification and the communication of year 1990, in the absence of official document to prove that CTS No.871 is changed to CTS

858 to 860. The trial Court disbelieved the oral evidence and held that Notification of 1977 is not sufficient to hold that the suit premises is declared as slum.

9. The finding of the trial Court is based on proper appreciation of the evidence of DW-1 and cannot be said to suffer from any infirmity. For the purpose of establishing that the suit premises is situated in an area declared as slum it was necessary for the defendant to first establish that Survey No.51 has been given to CTS No.858 to CTS No.860 or for that matter CTS No.871 which was changed to CTS No.858 to CTS No.860. The Notification which is annexed at page No. 199 of the compilation of documents is sufficient evidence as regards CTS No.858 to CTS No. 860 being notified as slum. However there is no evidence which is produced on record to link the suit premises which is stated to be situated on Survey No.51 to CTS No.858 to CTS No. 860 . Apart from the bare words of DW-2 who has merely deposed that the suit premises is declared as a slum and has produced Notification of 1977, there is no credible documentary evidence produced on record to link the suit premises to CTS No.858 to CTS No.860. Pertinently, in the cross examination, DW-1 has deposed that he does not know the CTS number on which suit premises is situated and he cannot say whether the suit premises is situated at Survey No.51 or CTS

No.842 at village Poisar, which was the case put forward in the cross examination by the respondent-plaintiff.

10. The finding of the trial Court is based on appreciation of the evidence which has come on record and there is no perversity in the findings of the trial Court. As regards communication dated 17/3/1990, which is annexed at page No.171 of the petition, the same appears to be the response of the Collector to the Application filed by the occupant of the premises seeking information about CTS No.858 to CTS No.860. In my opinion, the said communication cannot assist the case of the petitioner as evidence on record does not demonstrate that the said communication was produced before trial Court.

11. In exercise of powers under 115 of Civil Procedure Code, the findings could have been set aside if the same suffers from any perversity. The findings of the trial Court are based on proper appreciation of oral and documentary evidence on record and does not suffer from any infirmity.

12. In light of above, Civil Revision Application is dismissed.

(SHARMILA U. DESHMUKH, J.)