

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL REVISION APPLICATION NO. 641 OF 2019****Kashinath Bhiwa Lohar and Ors.****....Applicants****V/s.****Baburao Mallikarjun Ligade****....Respondent**

Mr. Ashutosh Kulkarni with Mr. Siddharth Shitole, *for the Applicants.*

Mr. Sujeet R. Bagade, *for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

Date : 19 SEPTEMBER 2024.

P.C. :

1) The revisionary jurisdiction of this Court is invoked under Section 115 of the Code of Civil Procedure, 1908 (**the Code**) for setting up a challenge to the Judgment and Decree dated 17 July 2019 passed by District Judge – 1, Barshi allowing Regular Civil Appeal No. 354 of 2014 and setting aside the Judgment and Decree dated 25 September 2013 passed by the Joint Civil Judge Senior Division, Barshi in Regular Civil Suit No. 91 of 2013. The Appellate Court has decreed Regular Civil Suit No. 91 of 2013 by directing the Applicants / Defendants to handover possessions of the suit premises to the Plaintiff.

2) I have heard Mr. Kulkarni, the learned counsel appearing for Revision Applicants and Mr. Bagade, the learned counsel appearing for Respondent / Original Plaintiff.

3) After having considered the submissions canvassed by the learned counsel appearing for parties, it is seen that the main reason which weighed with the Trial Court for dismissal of the suit was filing of a composite suit by the Plaintiff despite grant of liberty by the Appellate Court in previous round of litigation (RCS No. 555 of 1992) to file two separate suits in two different Courts viz. for eviction from tenanted property and for removal of encroachment from property outside the tenanted premises. The Trial Court held that despite seeking such liberty from the Appellate Court in the previous round of litigation, Plaintiff erroneously filed one suit in respect of both the portions viz tenanted premises plus encroached property.

4) In my view, the Trial Court has erred in dismissing the suit on the ground of maintainability. True it is that Plaintiff pleaded in previous round of litigation (RCS No. 555 of 1992) that only one room admeasuring 9.5 x 4.4 ft. was let out and the remaining portion was encroached upon by the Defendants. Therefore, he filed a composite suit bearing RCS No. 555 / 1992 seeking ouster of the Defendant from both the portions viz tenanted premises as well as encroached property. After realizing that the composite suit for seeking ouster of Defendant from tenanted premises and encroached property would not be maintainable, Plaintiff withdrew RCS No. 555 / 1992 at appellate stage with liberty to file two separate suits

before two separate Courts having respective jurisdiction. What must be noted is the fact that in the previous round of litigation (RCS No.555 of 1992), Defendant filed written statement contending that he was a tenant in respect of two rooms totally admeasuring 18 ft x 20 ft. Defendant thus contested the claim of encroachment and claimed that both the rooms were let out to him as a tenant. Though Plaintiff sought liberty in the previous round of litigation to file two distinct suits, he apparently realised that there was no point in entering into debate about the exact premises which were let out. He accepted Defendants' claim that tenancy was created in respect of the both the rooms and accordingly gave up the contention of encroachment and filed fresh suit bearing RCS No. 238 of 2007 for recovery of possession in respect of both the rooms by admitting Defendants as tenant in respect of both the rooms. In my view therefore, the fresh suit bearing RCS No. 238 of 2007 was premised on Defendants' own admission in the previous round of litigation that they were inducted as tenants in respect of both the rooms. In my view therefore, the Trial Court clearly erred in dismissing the suit as not maintainable, which error has rightly been corrected by the Appellate Court.

5) So far as the ground of default in payment of rent is concerned, the findings recorded by the Trial Court on the issue of default are preposterous to say the least. Plaintiff pleaded in the Plaint that he had issued Demand Notice dated 20 October 2006 claiming arrears of rent from Defendants. Defendants had admitted receipt of the said notice. The service of Demand

Notice was proved as required under Section 15 (2) of the Maharashtra Rent Control Act, 1999 (**MRC Act**). The Trial Court ought to have considered whether the demand in the Notice was met with or not. The Trial Court ought to have gone ahead and considered whether the deposit of the demanded amount together with interest and costs of the suit was made in the Court within 90 days of service of suit summons. Instead of undertaking this inquiry mandated by law, the Trial Court proceeded to hold that the Defendant was 'likely to pay the rent amount to landlord'. It is in comprehensible as to how 'possibility' of tenant paying rent can save decree of eviction under Section 15 of the MRC Act. This is a reason why, this Court is left with no other alternative but to record a finding that the reasonings adopted by the Trial Court are not only perverse but also preposterous. The Appellate Court has rightly considered this position and has accepted the ground of default after noticing that the amount of rent demanded in the notice was not paid within the statutory period and the Defendant also failed to avail the opportunity of depositing the amount of rent, interests and costs within 90 days of service of the suit summons. The ground of default in payment of rent has rightly been accepted by the Appellate Court.

6) So far as the ground of erecting permanent structures is concerned, it is borne out in evidence that the Defendants have engaged in massive unauthorized construction and authorized activities in the suit premises. They raised construction of a structure consisting of wooden planks, obtained commercial

electric connection, installed drilling and welding machines accompanied by 2 HP electric motor etc. All these activities undertaken by the Defendants are clearly in the realm of breach of the terms of tenancy attracting provisions of Section 16(1)(a) and 16(1)(b) of the MRC Act.

7) So far as the ground of *bonafide* requirement of the Plaintiff is concerned, the Appellate Court has considered the position that though Plaintiff owns three separate properties at CTS No. 2510 / F, 2502 and 2250, he was actually possessing only one property being CTS No. 2250, which was insufficient and inconvenient for residence of his family. Plaintiff also pleaded the need of his son for commencing business in the suit premises. In my view, *bonafide* need of the Plaintiff is established. Though Mr. Kulkarni has sought to highlight the issue of sale of balance portion of land at CTS No. 2510 / F, the sale of said land is apparently attributed to Defendants' conduct in continuously encroaching upon the vacant space around the suit property. In my view therefore, even the finding recorded on the issue of *bonafide* requirement does not warrant interference by this Court.

8) After considering the overall conspectus with the case, I am of the view that no interference is warranted in revisionary jurisdiction of this Court in findings recorded by the Appellate Court. The Trial Court had grossly erred in dismissing the suit. The Appellate Court has rightly corrected the errors in the findings of the Trial Court. I therefore, do not find any valid ground to entertain the present Revision Application.

9) The Civil Revision Application is accordingly dismissed.
No costs.

10) After the order is pronounced Mr. Kulkarni would pray of time of six months to vacate the suit premises. The request is opposed by Mr. Bagade contending that the decree has been passed by the Appellate Court on 17 July 2019 and the Revision Applicants have kept the Revision Application pending in this Court without moving the same for the last five long years. Thus, the Revision Applicants are in possession of the suit premises in absence of any interim order from this Court for the last five long years. Mr. Bagade would further submit that the Revision Applicants have sought to obstruct the decree by raising various contentions. If Revision Applicants want time to vacate the suit premises, they will have to withdraw their obstruction before the Executing Court as well. Accordingly, Revision Applicant shall file an undertaking in this Court on usual terms by incorporating additional condition of withdrawal of obstruction presented to the decree within a period of two weeks from today. Subject to filing of such undertaking, the Revision Applicants are granted time till 31 December 2024 to vacate the suit premises.

[SANDEEP V. MARNE, J.]

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