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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 30 OF 2023

Majjid Ibrahim Shaikh

..... Applicant

VERSUS

Dilip Anant Gite

..... Respondent

Mr.Dilip Bodake a/w. Mr.Sharad Bhosale, Ms.Shraddha Pawar for the Applicant.

Mr.Niranjan Kandade i/b. Mr.Nikhil Wadikar for the Respondent.

CORAM: RAJESH S. PATIL, J.

DATE : 30 JANUARY, 2024

P.C. :-

This Civil Revision Application is filed by the original defendant challenging the concurrent findings recorded by the Trial Court and the District Court.

2. The respondent/original plaintiff/landlord filed a suit for eviction against the applicant with regard to the suit premises which is a shop admeasuring 7 feet x 20 feet situated at Village Songirwadi, Taluka Wai, District Satara. In the said suit, the defendant filed its written statement and denied the contents as

averred in the plaint. The issues were framed in the said suit.

The said issues are as under :-

1. Does the plaintiff proves that the defendant is in arrears of rent amount of Rs.5,600/- ?
2. Does the plaintiff proves that he validly terminated the tenancy of the defendant by issuing notice dated 23/04/2010 ?
3. Whether the plaintiff is entitled to recover the possession of the suit property ?
4. Whether the plaintiff is entitled to arrears of rent amount of Rs.1800/- ?
5. Whether the plaintiff is entitled to mesne profits ?
6. What order and decree ?

3. It appears from the record that the plaintiff had examined two witnesses in order to prove his case of eviction. It appears from the record that the defendant has not cross examined the plaintiff's witnesses and neither has defendant led its evidence. The Trial Court thereafter by its judgment and order dated 21 November, 2014 decreed the suit by directing the defendant to handover vacant possession.

4. Being aggrieved by the judgment and decree passed by the Trial Court, the tenant filed an appeal before the District Court, being Regular Civil Appeal No. 277 of 2016. In the said appeal, the District Court framed its points for determination. The said points for determination are as under :-

1. Whether the defendant is a wilful defaulter ?
2. Whether the suit shop is not used for the purpose for which it was rented for a period of more than 6 months prior to the date of the filing of this suit ?
3. Whether the suit shop is reasonable and bonafide and required by the plaintiff for his own use ?
4. Whether the plaintiff is entitled for possession of the suit shop?
5. Whether the plaintiff is entitled for recovery of the arrears of rent as prayed ?
6. Whether the plaintiff is entitled for mesne profits ?
7. Whether the suit is tenable ?
8. Whether the matter needs to be remanded back for retrial ?
9. Whether the judgment and order of the Ld. Trial Judge needs interference ?
10. What order and decree ?

5. It appears that for the first time, the Appellate Court amongst other points, also framed a point “reasonable and *bonafide* requirement of the plaintiff”.

6. The Appellate Court by its judgment and decree dated 28 September, 2022 dismissed the appeal filed by the tenant and answered the points for determination in favour of the plaintiff, of ‘willful defaulter’ and also on ‘reasonable and *bonafide* requirement of the plaintiff’.

7. It was the contention of the defendant that he had paid the arrears of rent but the same was not accepted by the plaintiff. It was his contention that by money order dated 14 July, 2010, the rent was sent to the plaintiff, but he did not accept the same. It was also contention of the defendant that an application was preferred by the defendant, Ex.14, Ex.15 and Ex.16 for production of the documents including the documents being Sale Deeds dated 3 February, 1987 and 10 July, 2013.

8. By an order dated 15 January, 2022, production of the documents was allowed.

9. The Appellate Court though considered this fact about the sale deed, however as regards the ownership of the suit premises is concerned, the Appellate Court gave a finding that the tenant had accepted the plaintiff as its landlord. Therefore, it is held that the suit was tenable as there was no point for determination, to decide “whether the plaintiff is the landlord of the suit premises”.

10. Taking into consideration the above facts, it appears that the Trial Court had never framed an issue about “*bonafide* and reasonable requirement”. The said issue/point for determination for the first time was framed by the Appellate Court. The defendant has not led any evidence and has not even cross examined the witnesses of the plaintiff. However, the Appellate Court has come to the finding that as per the sale deed, it can be seen that the plaintiff is not the owner of the suit shop.

Therefore, according to me it will be necessary for the Court to frame an issue in this regard and evidence of the parties would be necessary.

11. Hence, I am hereby quashing and setting aside both the judgments i.e. judgment dated 21 November, 2014 passed by the Civil Judge, Junior Division, Wai in Regular Civil Suit No. 141 of 2010 and the judgment and decree dated 28 September, 2022 passed by the Ad-hoc District Judge (1), Satara in Regular Civil Appeal No. 277 of 2016. Regular Civil Suit No. 141 of 2010 is restored back to file of Civil Judge, Junior Division, Wai.

12. The Civil Judge, Junior Division should hear the Regular Civil Suit No. 141 of 2010 afresh and frame the issue again. Thereafter allow the parties to lead the evidence and decide the matter on its own merits.

13. The Civil Judge, Junior Division, Wai is also directed to frame issue on the point, Whether the plaintiff is the landlord of

the suit premises ? apart from the other issues which he will be framing.

14. The applicant/defendant is directed to deposit the entire arrears of agreed rent within a period of four weeks from today.

15. The applicant should also deposit the rent of the suit premises from January 2024 for three months in advance and should keep paying the same quarterly in advance till the hearing and final disposal of the suit or as per the directions of the Court below without prejudice to the rights and contentions of the parties.

16. In view of the above, Civil Revision Application is accordingly disposed of.

[RAJESH S. PATIL, J.]