

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 316 OF 2023

Nitin s/o. Raichand Lodaya

..... Applicant

VERSUS

Zenith Tins Ltd. & Ors.

..... Respondents

Mr.Karan Bhosale a/w. Mr.Aamir Koradia, Minaz Mozawala i/b.
Mr.Rajendra for the Applicant.

Ms.Ranjana Parikh for the Respondent No.1.

CORAM: RAJESH S. PATIL, J.

DATE : 17 APRIL, 2024

P.C. :-

This civil revision application is filed by the original defendant no.4(b), challenging concurrent findings of the eviction recorded by the Trial Court and by the Appellate Court. The respondent no.1 herein is the landlord of the suit premises who had granted tenancy of the suit premises to the partnership firm Windsor Engineering and Welding Works. The partners of the said partnership firm at the relevant time were one Mr.Gilbert Francis Soares and Mr.Nonath Francis Soares.

2. In the year 2001, an eviction suit under the Maharashtra Rent Control Act, on the ground of 'subletting' and 'arrear of rent' was filed by the landlord against the said partnership firm and its partners. So also, the persons to whom according to the plaintiffs subletting was done, were added as party defendants.

3. The written statement was filed by the defendants. Thereafter, the plaintiffs entered the witness box and led their evidence. However, the defendants choose not to cross examine the witness of the plaintiffs. So also, the defendants did not enter the witness box.

4. Thereafter, the matter was heard and the Trial Court by its judgment and decree dated 2 February, 2015, decreed the eviction suit of the plaintiffs and directed the defendants to handover the possession of the suit premises.

5. Being aggrieved by the judgment and decree of the Trial Court, only original defendant no.4(b) filed an appeal before the

Division Bench of the Court of the Small Causes. Rest of the defendants chose not to challenge the judgment and decree passed by the Trial Court. The appeal filed by the original defendant no.4(b) was heard and by judgment and decree dated 22 December, 2022 dismissed the said appeal. Against the concurrent findings recorded by the two Courts, the present civil revision application under section 115 of the Code of Civil Procedure has been filed by the original defendant no.4(b).

6. Mr. Bhosale, learned counsel made his submissions on behalf of the applicant (original defendant no. 4(b)). At the beginning of his arguments, he submitted that his arguments are going to be limited only to the point of suit barred by law of limitation.

7. Hence, there is no argument as far as the ground of subletting is concerned.

8. Therefore, I have to consider the only issue whether the

eviction suit filed in the year 2001, was within limitation. Since, as far as the ground of subletting is concerned, there is a concurrent finding and it is settled law that when an tenancy is created in the name of the partnership firm, the partners of the firm at the relevant time are the tenants. Therefore, even though new partners comes in the firm, they can't be called as the tenants.

9. Mr.Bhosale, as far as limitation is concerned, submitted that in the year 1982, the writ petitions were filed before this Court. He submitted that in the said group, writ petitions which were heard together by the Division Bench of this Court, his client, the original defendant no.4(b) was a party to one of the writ petition, therefore the plaintiffs landlord of the suit premises who was also a party petitioner in one of the writ petition was aware about the status of the partnership firm. He submitted that therefore, according to him, the suit filed in the year 2001 was clearly barred by law of limitation. He further submitted that even if 1982 is not considered as a time from which the period

for filing the suit began. He submits that in the year 1988, by the common order all the writ petitions were disposed of. He submitted that the landlord had a constructive notice about the constitution of the firm in the year 1982/1988, therefore, according to him, the suit was clearly barred by law of limitation.

10. He submitted that the letter of 19 October, 1993 written by the partner of the partnership firm to the landlord will not create a fresh cause of action to file the eviction suit.

11. He submitted that even though the defendants had not led evidence even then the documents which they had produced by way of enclosures to their written statement should have been considered by the Courts below while deciding the issue of limitation.

12. Mr.Bhosale also referred to two judgments to buttress his submissions :-

(i) Judgment of Supreme Court in case of

Juwarsingh s/o. Bheraji & Others vs. State of Madhya Pradesh, 1980 (Supp.) SCC 417 and,

(ii) Judgment of this Court in case of *Taherbhai T. Poonawala & Ors. vs. S.Hamid H.Patel (deceased by L.Rs.) & Ors., in Writ Petition No. 684 of 1991* dated 5 December, 2006.

13. Ms.Ranjana Parikh, learned counsel appearing for the respondent no.1 landlord submitted that the plaintiffs landlord had no knowledge about change in the constitution of the firm. She submitted that it was only on 19 October, 1993 when a letter was written on behalf of the partnership firm by the person 'Ashit R. Mehta', enclosing therewith a cheque which was signed by some another person, that her clients/landlord realized that there is change in the constitution of firm. She submits that immediately her client on 15 December, 1993 wrote a letter to the firm seeking details about the constitution of the firm i.e. the retirement date or dissolution of the partnership firm business.

14. She submits that both the Courts have considered this fact as far as limitation is concerned, and have held that the suit is within limitation. She submits that even on the ground of subletting, there is concurrent finding. She submits that as far as the submission of the petitioner [defendant no.4(b)] are concerned, the same has no merit as the writ petitions which were filed in the year 1982, were group petitions filed by different land occupiers. She submits that her client had filed three different writ petitions, which were part of group of writ petitions. She submits that Writ Petition No. 4081 of 1983 filed by her client as petitioners, wherein the respondent no.7 is arrayed as a firm M/s. Windsor Engineering and Welding Works. She submits that the documents which have been referred by the advocate appearing for the petitioner Mr.Bhosale is a petition filed by 14 persons together being Writ Petition No. 1078 of 1983.

15. She submits that one Mr.Pentaya Jimaya was petitioner no.1 in Writ Petition No. 1078 of 1983 and it appears that the

present applicant is arrayed at serial no.10 and his address now appears to be shown as that of M/s. Windsor Engineering and Welding. She submits that there is no question of the landlord being aware that who all are the parties in all the group writ petitions. She further submits that at ground no.20 of the appeal memo filed before the Appellate Bench, it has been mentioned that 'The Trial Court failed to appreciate the fact which has been introduced in the written statement that there are various proceedings commencing from 1983, the plaintiffs were aware about the occupation of the original defendant nos. 4, 5, 6 in respect of the suit premises'. She submits that except the bald statement, there is no evidence on record to prove that the original plaintiffs were aware about the constitution of the partnership firm from the year 1982/1988. She submits that the present proceedings, no evidence is led by the petitioner [original defendant no.4(b)], neither the cross examination of the plaintiffs was conducted, inspite of various chance given by the Trial Court. She submits that the present civil revision application

should not be entertained and should be dismissed with cost.

16. It is also a matter of record that the present civil revision application has been filed by the original defendant no. 4(b) through power of attorney holder viz. Mr.Mohammed Zubair Adam Lakdawala. It was submission on behalf of the landlord, that even original defendant no.4(b) is not interested in the suit premises and it is the power of attorney of the original no.4(b) who is pursuing the litigation.

17. I have heard learned counsel of both the sides and I have considered the documents on record.

18. The only limited point which I have to consider is whether the suit is filed within limitation, since the parties are at agreement that the ground of 'subletting' which has been concurrently held by both the courts against the defendants' no perversity is found.

19. The suit admittedly is filed in the year 2001 for eviction of the ground of 'subletting' and 'arrears of rent'. The submission of the applicant before this Court is that the plaintiffs landlord were aware about the constitution of the partnership firm in the year 1982. Therefore, according to the applicant, the time limit to file a suit of 12 years start from the year 1982.

20. It is a matter of record that the present petition and the appeal before the Appellate Bench was filed only by one defendant i.e. defendant no.4(b). Therefore, the rest of the defendants have accepted the decree passed by the Trial Court and by the Appellate Court.

21. It is also a matter of record that none of the defendants have cross examined the witnesses of the plaintiffs, neither the defendants have stepped into the witness box to lead evidence.

22. There is no material on record to show that the original plaintiffs were aware about the constitution of the firm. In short,

the argument of the petitioner is that if there was change into the constitution of the partnership firm/tenant, i.e. a new partner being introduced in the firm. Therefore, the landlord if intended to file suit on the ground of subletting, the limitation period would start from the year 1982. According to me, such an argument will have no legal base since the group of petitions being filed by various parties in this Court in the year 1982. It can't be believed that the plaintiffs landlord who also had filed petition were aware that the constitution of partnership firm of his tenant, and about the new partners have been inducted.

23. In the present petition, eviction suit was filed in the year 2001 based on the document, a letter dated 19 October, 1993 wherein a new person has written a letter to the landlord and requested to accept the rent. According to me, a suit was filed well within limitation and there is no reason to interfere with the concurrent findings recorded by both the Courts.

24. It is also a matter of record that the present civil revision

application has been filed by the original defendant no. 4(b) through power of attorney holder viz. Mr.Mohammed Zubair Adam Lakdawala. It was submission on behalf of the landlord, that even original defendant no.4(b) is not interested in the suit premises and it is the power of attorney of the original no.4(b) who is pursuing the litigation.

25. I find no merit in this civil revision application. There is no explanation why civil revision application is filed through power of attorney holder and what is the interest of the power of attorney with the applicant and the suit premises. Civil revision application is dismissed. No costs.

26. Mr.Bhosale, at this stage submits that earlier stay be extended by four weeks.

27. Ms.Parikh opposes this time to vacate the suit premises. Stay is granted for five weeks.

[RAJESH S. PATIL, J.]