

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 473 OF 2023

Satish Jagannath Sharma	...Applicant
Versus	
1 Khemchand Khushaldas Rajpal Vaswani	...Respondent

Adv. Vikas Kolekar for the Applicant.
Adv. Pradeep Thorat a/w. Adv. Aditi N. for the Respondent.

CORAM : RAJESH S. PATIL, J.

DATED : 29 FEBRUARY 2024

P.C.:

1. This civil revision application challenges the concurrent findings recorded by the Trial Court and the Division Bench of Small Cause Court of eviction on the ground of “*arrears of rent*”, “*subletting*” and “*bona fide requirement*”.

2. The Applicant herein is the original defendant no.2. The suit premises which is admeasuring 200 sq.ft. The eviction decree has already been executed as the possession of in the suit premises has already been handed over to the respondent (original plaintiff). An inventory of the articles in the suit premises has been prepared by the bailiff. However, the said articles had not been

removed until now by the applicant(original defendant).

3. The applicant who was the original defendant had filed an R.A.D. Suit against the respondent so also the defendant no.1 had filed an R.A.D suit for declaration of the tenancy against the respondent. Both the R.A.D suits were dismissed for non prosecution on 13 March 1996 and 31 August 1998 respectively. Thereafter, the defendants have not challenged the order of dismissal.

4. The respondent has thereafter filed an eviction suit being R.A.E Suit No.1068/1696/2003 on four grounds viz. “arrears of rent”, “subletting”, “permanent additions and alterations” and “bona fide requirement”. The applicant herein who was the original defendant filed his written statement. No written statement was filed on behalf of the defendant no.1. After the issues were framed evidence was lead by the plaintiff so also by the applicant (original defendant). The Trial Court had dismissed the R.A.E. Suit however, in an appeal preferred by the landlord, the matter was remanded back for fresh hearing.

5. After remand the plaintiff lead evidence by examining six witnesses. The witnesses examined by the plaintiff were cross-examined by the advocate appearing for the present applicant.

Thereafter, the defendant granted time to lead evidence. However, defendant failed to lead evidence. Hence, the Trial Court by its judgment and order dated 17 October 2019 decreed the suit on the four grounds.

6. Being aggrieved by the judgment and decree passed by the Trial Court, the applicant herein preferred an appeal before the division bench of the Small Causes Court. In the meanwhile, an order was passed in the execution proceedings filed by the original plaintiff since there is no stay granted to the judgment and decree passed by the Trial Court, the executing Court passed an order directing the bailiff to take physical possession of the suit premises. The decree was accordingly executed on 16 January 2020.

7. Against the order passed by the Executing Court, a Writ Petition was preferred in this Court by the applicant (original defendant no.2). However, pending the writ petition before this Court since the decree was already executed the Writ Petition was dismissed as having become infructuous.

8. The appeal filed by the defendant no.2 was disposed of by judgment and decree dated 6 May 2023 thereby confirming the

decree to pass on grounds of arrears of rent, subletting, *bona fide* requirement.

9. The present civil revision application challenges the concurrent findings recorded by both the courts on the grounds of arrears of rent, subletting and *bona fide* requirement.

10. Mr. Khandeparkar, appearing for the applicant submitted that the applicant was not able to lead evidence since he had suffered an heart attack on 29 January 2019, therefore, he could not know the various orders passed by the Trial Court. Mr. Khandeparkar further submitted that applicant had entirely dependent on his son who use to attend the court proceedings, however, the said son of applicant never informed about the applicant about the current happening in the court proceedings. Mr.Khandeparkar further argued that immediately on having knowledge about some execution applications being filed, the applicant rush to the court and filed an appeal. In the appeal proceedings notices were issued to the respondent, however, within two days, the decree was executed by the original plaintiff. Mr. Khandeparkar submitted that after the order dated 4 January 2021 was passed, the matter was to come only on 29 January 2022. However, before the next date of the hearing the matter was

taken up by the plaintiff on board and the order was passed after issuance of warrant of possession with the help of police.

11. Mr. Khandeparkar submitted that on 16 January 2020, the applicant had moved before the Appellate Court and sought stay to the execution proceedings. He submitted that therefore, the appellate court did grant status quo, therefore, all the articles of the applicants are lying in the suit premises. He therefore, submitted that this court should stay the execution and implementation of the judgment and decree passed by the Trial Court and the Appellate Court.

12. Mr. Thorat appearing for the original plaintiff submitted that the applicant who was arrayed as defendant no.2 to the suit, in fact, had more no relationship with the original defendant no.1. Mr. Thorat submitted that applicant uses the middle name and surname of defendant no.1, however, in fact, he has no relationship with the defendant no.1. He is person who has subletted the suit premises by defendant no.1. Mr. Thorat submits that the case of the applicant that the defendant no.1 father were the original tenant is completely a false case because of defendant no.1 had expired on 1 February 1959 and the plaintiff had acquired the suit premises only on 17 October 1960 from MHADA.

Mr. Thorat further submitted that after applicant (original defendant) suffering heart attack on 29 January 2019. The applicant had appeared before the Trial Court at least 29 times till the 20 July 2019. He submits that on 20 July 2019, the applicant sought to withdraw the appearance of their advocate on record and sought time to appoint a new advocate. However, the applicant failed to appoint any new lawyer on their behalf and sought adjournment from the court on 23 July 2019, and on 20 August 2019 the son of the applicant appeared in the court. So also on 27 August 2019 and 7 September 2019, the applicant had failed to lead evidence. Since, so also the original defendant had not appeared in the matter, the suit proceeded further as the plaintiff had already lead evidence.

13. I have heard both the counsel and have gone through the proceedings, it appears that the claim of the original applicant (defendant no.2) is disbelieved by the Trial Court as defendant No.1 failed to appear before the Court and file their written statement. The defendant no.2 did file written statement, but however, failed to lead evidence. The applicant did not immediately move the court by filing the application for challenging the decree passed by the Trial Court. In the meanwhile, an execution application filed before the Trial Court by the decree holder (Plaintiff), an order was passed on 4 January

2020 thereby warrant of possession under Order 21 Rule 35 of the CPC was issued. On 16 January 2020 the warrant was executed but, however, on the same day as the applicant had moved the Executing Court, the Court had stayed further proceedings of execution. Therefore, even though the Bailiff had executed the warrant, however, as regards inventory of articles of the applicant lying in the suit premises, they remained in the suit premises.

15. The writ petition was filed after one year by the applicant challenging the order dated 4 January 2020. In the said writ petition it was not disclosed that the decree is already executed. Therefore, the notices were issued by the Court. The said writ petition was ultimately disposed of this court on 7 August 2023, as having become infructuous. So also the appeal challenging the Trial Court decree was disposed of by the Appellate Bench by dismissing the Appeal filed by the Applicant. They required the suit premises as they have some 25 members in the family. The plaintiffs has lead his evidence and proved the ground of bona fide requirement so also the ground of subletting. As far as the ground of subletting is concerned, there is specific averment in the plaint that the defendant No.1 as sublet the premises in favour of the defendant no.2 and have profited. The said contentions has been raised in the paragraph no.4, sub paragraph no.G. Once the plaintiff had raised a contention in its plaint, the burden was shifted on the defendant to prove that there was no subletting. The defendant no.1 has chosen not to lead evidence, neither file their written statement. The defendant no.2 did file their written statement, however, has not lead evidence.

Therefore, according to me, the ground of subletting has been proved. As regards the arrears of rent, I am not inclined to grant decree on the said ground.

16. However, since the decree is confirmed on the grounds of subletting and bona fide requirement. Nothing survive in this Civil Revision Application, the decree has already been executed.

17. The Civil Revision Application is accordingly dismissed.

18. The execution application No.2 3 of 2020 pending in RAE Suit No.1068/1696/2003 is hereby expedited.

(RAJESH S. PATIL, J.)