

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.477 OF 2022
WITH
INTERIM APPLICATION (ST) NO.2703 OF 2024
WITH
CIVIL REVISION APPLICATION NO.402 OF 2022

Ifat Ziyauddin Usmani Shaikh and Ors. ... Applicants

V/s.

Hemalata Damji Kunverji Bharani & Ors. ... Respondents

SHARADA
RANGNATH
WAHULE

Digitally signed by
SHARADA
RANGNATH WAHULE
Date: 2024.02.10
17:30:21 +0530

WITH
CIVIL REVISION APPLICATION NO.402 OF 2022

Chandrabahadoor s/o RajnarayanBacchan
Singh & Ors. ... Applicants

V/s.

Hemalata Wd/o Damji Kunverji
Bharani & Ors. ... Respondents

Adv. Zaid Ansari a/w N. Gudwala I.b Zaid Ansari & Association,
Advocate for the Applicants.

Adv. Yahya Ghoghari i.b Shamim & Co., Advocate for Respondent
Nos. 1 to 4 in CRA/402/2022 & for Respondent Nos.3 to 6 in
CRA/402/2022.

Adv. Vimlesh Singh, Advocate for the Applicant in CRA/402/2022.

CORAM : RAJESH S. PATIL, J.

DATED : 29 JANUARY 2024

PC.:

1. The Civil Revision Application No. 402 of 2022 is filed by

original defendant's no.1's legal heirs / tenant and Civil Revision Application No.477 of 2022 has been filed by original defendant nos.6 and 7 / sub-tenants.

2. Admittedly in both the Civil Revision Applications there is no orders passed staying the execution of the judgment and decree passed by the Trial Court and passed by the Division Bench of Small Causes Court. It is also admitted that the possession decree has been executed during the pendency of these Civil Revision Applications, on 8 December, 2023. The landlord has taken possession of the suit premises pursuant to the decree, in Execution Application with the help of Court bailiff and police.

3. An Interim Application has been filed in Civil Revision Application No.477 of 2022 by the subtenant, thereby seeking a stay to the effect and operation of impugned judgment and decree passed by the Small Causes Court, and also to permit the Applicants to carry on their partnership business from the suit premises, and in the alternative to prayer clause (b) to appoint court receiver.

4. The landlord had filed a suit for eviction, initially against the tenant on the ground of, subletting, arrears of rent, change of user of suit premises, unauthorized constructions in the suit premises and on the grounds of : nuisance. After filing of the suit in the year 1988 the suit was amended, thereby the plaintiff added defendant nos.6 and 7 as according to the plaintiff the suit premises was subletted to defendant nos.6 and 7 and the original defendants were profiteering from the suit premises.

5. After the original defendant died his legal heirs were brought on record in the suit as defendant nos.1 to 5. The defendant nos.1 to 5 filed their written statement. The defendant nos.1 to 5 denied the contention of the plaintiff and stated that defendant nos.6 and 7 are partners of the Adarsh Dairy Farm. So also defendant nos.6 and 7 filed their written statement, the defendant nos.6 and 7 denied the contention of the plaintiff.

6. During the pendency of the suit interim notice was moved by the plaintiff, and by an Order dated 22 November 1986 the defendant were enjoined from not to part with the suit premises.

7. The plaintiff led its evidence by examined plaintiff no.3 and examining the commissioner as witness no.2. The defendant nos.1 to 5 in all examined 3 witnesses including an officer from the BMC, and a clerk from registrar of firms, so also defendant no.3 was examined, by defendant nos.1 to 5.

8. On behalf of the defendant nos.6 to 7 the brother of defendant nos.6 and 7 were examined. After the evidence was recorded the parties being heard on merits, the Trial Court by its judgment and order dated 22 November 2013 decreed the suit of eviction on the ground of subletting, unlawful additions and alterations, waste and damages, nuisance and under Section 108 (o) of Transfer of Property Act.

9. Being aggrieved by the judgment and decree passed by the Trial Court, the defendant nos.1 to 5 (original tenant's L.R.) and defendant nos.6 and 7 (subtenants), jointly filed being Appeal No.112 of 2014 before the Division Bench of the Court of Small

Causes at Mumbai.

10. The Appellate Bench of Court of Small Causes thereafter heard the advocate's on behalf of the original defendant's and the plaintiff, and by its judgment and decree dated 5 May 2022 dismissed the appeal filed by the tenants and the subtenants.

11. Being aggrieved by the concurrent findings recorded by both the Courts, the tenants have filed in this Court, Civil Revision Application No.402 of 2022 and the subtenants have filed Civil Revision Application No.477 of 2022.

12. Mr. Vimlesh Singh made his submissions on behalf of the original tenant.

(i) Mr. Singh further submitted that since the possession has been taken over by the original landlord, there will be no harm if the present Civil Revision Application filed on behalf of the tenant, is admitted.

(ii) Mr. Singh further submitted that during the pendency of the eviction suit the original tenant RajnarayanBacchan Singh inducted defendant nos.6 and 7 into the partnership firm of "Adarsh Dairy Farm".

(iii) Mr. Singh further submitted that "Adarsh Dairy Farm" is a registered partnership firm and it has been registered on 9 March 1990.

(iv) Mr. Singh further submitted that as an by way of registered partnership deed firm defendant nos.6 and 7 have been inducted as partners, there cannot be any ground of subletting.

(v) Mr. Singh further submitted that even if it is presumed that the tenant had encroached upon any premises, which premises is not a tenanted premises given by landlord to the tenant, there cannot be a ground of additions and alterations as mentioned in the Rent Act, to grant a decree to the plaintiff landlord.

(vi) Mr. Singh further submitted that on the allegations of encroachment, the plaintiff has tried to prove the ground of waste and damage and also the ground of nuisance. He submitted that no such ground has been proved by the plaintiff.

13. Mr. Ansari made his submissions on behalf of subtenant.

(i) Mr. Ansari submitted that infact the partnership firm did not come into existence after filing of the suit, according to him, the partnership firm came into existence much prior to the filing of the suit, in the year 1980. Therefore, according to Mr. Ansari there cannot be a ground of subletting if the partnership firm has come into existence before filing of the suit.

(ii) Mr. Ansari submitted that the Trial Court had refused to take into consideration the certified copy of judgment and decree passed by the City Civil Court.

(iii) Mr. Ansari also fairly stated that he has not having the document as mentioned, called as undertaking” which was tendered in the first appeal, arising out of the decree passed in the City Civil Court Proceeding.

14. I have heard counsel of all the parties. I have considered the documents on record.

15. The decree of possession has been passed by the Trial Court and the Appellate Bench of the Court of Small Causes on the ground of subletting unlawful additions and alterations waste and damage and nuisance. It is a admitted fact that the decree has already been executed and the possession has been taken over by the landlord with the help of bailiff and police on 8 December, 2023.

16. It has been admitted fact that the original tenant of the suit premises was one Mr.RajnarayanBacchan Singh. The said Mr. RajnarayanBacchan Singh died during the pendency of the suit therefore, his legal heirs were brought on record in the suit by way of defendant Nos. 1 to 5. There was a specific order passed on 22 November 1986 in the suit, thereby injunctiong the defendant, from parting with the possession of the suit premises. It appears that thereafter, the original tenant legal heirs have found a partnership firm and defendant Nos.6 and 7 were inducted as partners of the said firm. Though the partnership deed says that defendant nos.6 and 7 would have no rights in the suit premises. The fact remains that the partnership firm started conducting the business from the suit premises. This according to me is a clear case of subletting when the original tenant of the suit premises was one person called as Mr. RajnarayanBacchan Singh.

17. In my opinion both the Courts that is the Trial Court and Appellate Court were correct in holding that the ground of subletting has been proved by the plaintiff. No interference called for in both the decrees passed by the Trial Court and Appellate Court on the ground of subletting.

18. As regards the ground of unlawful additions and alterations, it has been the case of the plaintiff that there was construction made by the defendant in the suit premises and also by encroaching upon the premises beyond the tenanted premises. The submission for advocate appearing on behalf of the tenant that encroachment of the premises beyond the suit premises could not amount to unlawful additions and alterations. According to me, apart from encroachment the original structure of the suit premises has been changed by the defendant by putting up a shutter and closing down the mori. This according to me, would be ground of unlawful additions and alterations which was without the permission of the landlord. As regards the encroachment made by the defendant, the same does amount to nuisance and waste and damage. Therefore, both the Courts according to me are right in granting a decree on the ground of unlawful additions and alteration in the suit premises.

19. In such a circumstances as mentioned above there is no merits in both the Civil Revision Applications.

20. These Civil Revision Applications are dismissed. Interim Application is also dismissed. No cost.

(RAJESH S. PATIL, J.)