

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.646 OF 2012

Mahendra Yadav, S/o Lavjari S. Yadav ... Applicant

V/s.

Chandrabali Rajnarayan Shukla ... Respondent

Adv. Panthi Desai i/by M. P. Vashi & Associates, Advocate for the Applicant.

Mr. D. D. Singh a/w Adv. D. K. Shukla, Advocate for the Respondent.

CORAM : RAJESH S. PATIL, J.

DATED : 02 APRIL 2024

P.C.:

1. The Applicant is the original defendant before the Trial Court in an eviction suit.
2. The parties are hereafter referred to as plaintiff and defendant as per there nomenclature before the Trial Court. The plaintiff had filed an eviction suit on the grounds on “additions and alterations”, “committing acts of waste and damage”, “Bonafide Requirement”, and “arrears of rent”.
3. The plaintiff entered the witness box and lead his evidence. The defendant no.1 entered the witness box and lead evidence on behalf of defendant.

4. The Trial Court by its judgment and decree dated 23 September 2009 decreed the suit of the plaintiff on the ground of 'permanent additions and alterations' in the suit premises.

5. Being dissatisfied with the judgment and decree passed by the Trial Court, the defendant filed Appeal No.233 of 2009 before the Appellate Bench of Small Causes Court. The Appellate Court by its judgment and decree dated 2 August 2012 dismissed the appeal filed by the original defendant. Against the concurrent findings recorded by both the Courts. The present Civil Revision Application has been filed by the original defendant before this Court.

6. The Present Civil Revision Application was admitted on 17 October 2012 and the execution of judgment and decree passed by both the Courts was stayed.

7. Ms. Desai appearing for the applicant submitted that all that the applicant did was improved the nature of the suit premises by putting up a permanent wall in place of the old structure and replacing the roof of suit premises. She submitted that even though the suit was filed on at least 4 grounds, the eviction decree was filed only one ground i.e. 'permanent additions and alterations'. She submitted that changing of Kaccha walls and replacing pucca walls of brick masonry along with A.C. sheet roof by cement slab roof could not amount to 'permanent additions and alterations'. She relied upon following judgments of Supreme Court and High Court, to buttress her submissions:-

1) ***Venkatlal G. Pittie Vs. M/s Bright Bros Pct. Ltd.*** Reported in

AIR 1987 SC 1939.

2) *Nagama Gulab Bagwan Vs. Laxmibai R. Gujar* reported in *2006 (3) Bom. C. R. 474.*

3) *Manohar Gajanan Koshe Vs. Sadashiv Mahade Pardeshi* reported in *2006 (6) Bom. C. R. 58.*

4) *M/s Geetajali Saree Emporium Vs. Vijaykumar Laxman Vaidhya* reported in *2008 (2) AIR Bom. R. 511.*

5) *Vithal N. Shetti Vs. prakash N. Rudrakar* reported in *2003 (3) Bom. C.R. 462.*

6) *Mramod R. Mhaske Vs. D. Oliver* reported in *2001 (Supp.2) Bom. C. R. 700.*

8. Mr. Singh appearing for the respondent landlord submitted that both the courts have concurrently held that defendant has made construction which amounts to permanent additions and alterations. He submitted that even the corporation had issued a notice under section 351 of the Bombay Municipal Corporation Act against the defendant. He submitted that the defendant challenged the issuance of notice under section 351, by filing the suit before the Bombay City Civil Court. He submitted that in the said suit the corporation did not file its written statement neither lead evidence. He submitted therefore, the said suit of the defendant was allowed. He submitted that Civil Revision Application should be dismissed with costs. Mr. Singh referred to the judgment of Supreme Court in the *Managing Director, Hindustan Aeronautics Ltd. Vs. Ajit Prasad Tarway* reported in *1972 (3) SC 195* and the

judgment of Bombay High Court in *Najama Gulab Bhagwan Vs. Laxmibai Rangildas Gujar* reported in *2006 (3) BCR 474*.

9. I have heard the counsel of both the sides and I have through the assistance of both the counsels gone through the documents on record.

10. In plaint, paragraph no.4 and paragraph no.5 (c) the plaintiff has pleaded that the defendant has carried out permanent additions and alterations in the suit premises and have also encroached upon the compulsory open space, beyond the suit premises, by constructing a room. Again on 16 June 2004 during the pendency of the suit the defendant encroached upon the compulsory open space and carried out further additions and alterations of permanent nature and unauthorisedly constructed one more room without permission of the landlord and of the Municipal Corporation. Hence, complaint was lodged by the plaintiff with the municipal commissioner and with Senior Inspector of Police at Andheri Police Station.

11. The plaintiff lead its evidence by narrating the same facts as stated in the plaint. The advocate for the defendant cross examined the plaintiff. Thereafter the defendant lead his evidence by defendant no.1 stepping into the witness box. The said witness of defendant was cross examined by the plaintiff.

12. The Trial Court in paragraph no.24 has recorded a finding that the defendant had encroached upon the open space around the suit premises and constructed a new room at the side of open space. So also the defendant without the permission of the

landlord had constructed new walls in place of the old walls in the suit premises and changed the roof of suit the suit premises. The Appellate Court in paragraph no.24 has specifically recorded that in the evidence it has been revealed that around 16 June 2004 defendant had encroached upon the open space surrounding the suit premises and constructed a new room. It was also recorded that defendant without any permission had constructed brick masonry walls and removed the roof of suit premises and in it's place he has put up A.C. sheets.

13. Under the provisions of section 13(1)(b) Bombay Rent Act the tenant can not erect on the premises any permanent structure without the landlord's written consent. In the explanation to the said sub section (b) the expressions "permanent structure" does not include the carrying out of any work for providing a wooden partition, standing cooking platform in kitchen, door, lattice work or opening of a window necessary for ventilation, a false ceiling, installation of air-conditioner, an exhaust outlet or a smoke chimney. The construction which is made by the defendant in the present proceedings is of replacing walls and changing of the roof. According to me the said construction does fall within the expression permanent structure as they are part of the explanation of section 13(1)(b). This apart, from the fact that the defendant has also constructed additional rooms in the open space adjoining to the suit structure.

14. The judgment referred by the applicant of this Court in the case of *Hotel Rosalia* (supra) with regard to changing of water tanks. According to me, just changing a water tank will not

amount to erection of any permanent structure. Therefore, the facts in *Hotel Rosalia* (supra) are quite different from the present proceedings. As regards the judgment of Supreme Court in *J.K. Iron* (supra) and *Britania Biscuit* (supra) both the above judgments are regarding there should be specific pleadings so that the defendant could deal with. I have already held in the above mention paras that paragraph 5(c) of the plaint there is a specific pleading as regards the 'permanent additions and alterations'. Therefore, the ratio laid down by the Supreme Court in *J. K. Iron* (supra) and *Britania Biscuit* could not applicable to be present proceedings.

15. As regards the judgment of *Keshavji Tamji Sanghavi* (supra) of this Court, the same pertains to changing of a old beam due to termite. The court held if a old beam were influenced of termite, the same could be changed, and it will not amount to additions and alterations of permanent nature. The facts in the said judgment are quite different from the present proceedings. As regards the judgment of *Alisaheb Adbul* (supra), in the said judgment, the facts was regarding a Mori. A construction of a Mori, the court held will not amount of additions and alterations of permanent nature. Hence, even these judgment could not be of any help in the present proceedings as the facts are quite different.

16. In the judgment of *Ratanlal Ramgopal Agarwal* (supra) the Trial Court and Appellate Court had held the findings in favour of the tenant. The landlord had challenged both the findings before the High Court in writ petition under Article 227. Therefore, this Court held that the finding recorded by both the Courts should not

be altered in the writ jurisdiction and the finding was confirm by this Court. In the present proceedings both the Courts are against the tenant on the ground of 'bonafide requirement', 'additions and alterations' as according to them the old walls and the roof was replaced by the tenant without having a written permission from the landlord. According to me, even the judgment of ***Ratanlal Ramgopal Agarwal*** (supra) will not help the tenant in the present proceedings.

17. I have carefully considered the concurrent findings recorded by both the Courts including the finding as to the tenant replacing the old walls with the new walls and changing the roof, so also construction of a additional rooms by the tenant without the written permission of the landlord. I am of the opinion that no infirmity is shown in the concurrent findings recorded by both the Courts. Hence, the Civil Revision Applications requires to be dismissed.

18. The Civil Revision Application is dismissed. No cost.

19. At this stage Ms. Desai has prayed that her client desires to challenge the finding recorded by this Court before the Supreme Court.

20. Mr. Singh has opposed the request made by Ms. Desai. The applicant is granted 10 weeks to vacant the suit premises from the date uploading this order, on an undertaking been filed by all the adult members in the family of the applicant within a period of one week from today. The said undertaking should state that they are the only members who are in occupation of the suit premises

and they will not create any third party interest in the suit premises and they will pay the agreed rent of the suit premises till the time they vacate the suit premises. A copy of the said undertaking should be furnished to the other side.

(RAJESH S. PATIL, J.)