

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.109 OF 2024

Ronen Moses Gadkar and Anr. ... Applicants

V/s.

Ruth Menahim Gadkar and Ors. ... Respondents

Ms. Jennifer Michael, Som Sinha, Divya Vishwanath & Sadaf Abidi
i/by Som Sinha & Associate, Advocate for the Applicants.
Mr. Durgesh Kulkarni a/w Adv. Harsh Sukhramani, Adv. K.
Hindalekar and Adv. Mayank N. Mishra, Advocate for the
Respondent.

CORAM : RAJESH S. PATIL, J.

DATED : 3 May 2024

P.C.:

1. This Civil Revision Application is filed by a defendant challenging the concurrent finding recorded by the Trial Court and the Appellate Court.
2. The Respondent herein is the original plaintiff and the Applicant herein is the original defendant. For the sake of convenience parties are referred to as per their nomenclature before the Trial Court.
3. The plaintiff had filed an L.E. suit for eviction before the Court of Small Causes at Bombay against the defendant. The suit premises is Shop No.5, Varsha Premises Co-operative Housing

Society Limited Andheri-(W), Mumbai-400061. The original defendant filed his written statement to the plaint, denying contents of the plaint. After the death of the original defendant his legal heirs were brought on record and they filed their additional written statement.

4. After the issues were framed, the plaintiff in all examined four witnesses. All the four witnesses of the plaintiff were cross-examined by the advocate for the defendant. The defendant no.1 thereafter led her evidence. She was cross-examined by the advocate appearing for the plaintiff.

5. By its judgment and decree dated 3 May 2018, the Court of the Small Causes at Bombay, decreed the suit of the plaintiff and passed an eviction decree against the defendant.

6. Being dissatisfied with the judgment and decree passed by the Trial Court, the defendant filed an appeal before the Appellate Bench Court of the Small Causes. The Appellate Bench of the Small Causes after hearing the parties vide its judgment and decree dated 2 November 2022 dismissed the appeal filed by the original plaintiff.

7. Against the concurrent findings of the Trial Court and the Appellate Court, the present Civil Revision Application is filed under section 115 of the Civil Procedure Code.

8. Ms. Jennifer Michael, appeared on behalf of the Applicant / original defendant, and made her submissions.

(i) She submitted that as per the pleadings in the plaint, is

concerned the case of the plaintiff is that of conducting agreement, therefore, according to her the Court of the Small Causes will have no jurisdiction to try and entertain the suit.

(ii) She submitted that it is also stated in the plaint that licenses of the business were in the name of plaintiff, and the plaintiff desired to allow the defendant to run the business. Therefore, a running business was handed over to the defendant and hence being a conducting business the Court of the Small Causes would have no jurisdiction.

(iii) The other line of her arguments is that the defendant infact was a owner of the suit premises hence, the dispute as to the title of the suit premises would not lie with the Court of Small Causes.

(iv) She further submitted that the definition of “licensee” under the old Bombay Rent Act and under the new Maharashtra Control Act, specifically exclude “a person conducting a running business belonging to the licensor”.

(v) Ms. Jennifer to buttress her submission relied upon two judgments. Viz ***Mangala Waman Karadikar Vs. Prakash Damodar Ranade*** reported in ***(2021) 6 Supreme Court Cases 139*** and ***Sarup Singh Vs. Union of India*** reported in ***(2011) 11 Supreme Court Cases 198***.

9. Mr. Kulkarni appearing for the Respondent made his submission on behalf of the original plaintiff.

(i) He submitted that the defendant has tried to take advantage of the fact that initials of the plaintiff and the defendant were the

same i.e. “M. E. Gadkar ”.

(ii) He submitted that even though the initials of both the plaintiff and defendant were same but the document Exhibit-63 which is an application for registration of society, in which the name of plaintiff, is clearly mention. He submits that the defendant had no answer to the said documents when was produced on record.

(iii) He submits that the suit was specifically filed as a L.E. suit for eviction before the Court of the Small Causes. He further relied upon Paragraph No.20 of the plaint where it is specifically stated that the suit was between licensor and licensee.

(iv) He also referred to Paragraph Nos.6 and 7 of the plaint where in the plaintiff it was specifically stated that defendant allowed to occupy premises at the monthly compensation of Rs.300/-, per month in the year 1982. It was also further stated that the occupation of the defendant was that of licensee and the defendant was not protected under the provisions of Bombay Rent Act. He submitted that both the Courts have considered the evidence of the parties and the documents on record.

(v) He submits that there is a concurrent finding by both the Courts, and hence this Court under its jurisdiction under section 115 of the Civil Procedure Code, should not entertain this Civil Revision Application.

10. I have heard counsel for both the sides and I have gone through the documents on record.

11. The averments in the plaint is specifically that the suit is filed as L.E. suit before the Court of the Small Causes. It is also specifically stated in the plaint that the suit between the licensor and licensee, and the licensee is not protected under the Rent Act. The compensation payable has been mentioned as Rs.300/- per month. The premises is the shop premises. It is a matter on record that document in the form of “application for registration of society” clearly mentions the name of the plaintiff i.e. Menahim E. Gadkar. Rest of the documents are mainly in the name of “M. E. Gadkar”. However, there was no argument on behalf of the defendant, as regards the “application for registration of society”. According to me, taking into consideration the evidence led and the documents on record case of eviction is made. So also the Defendants alternate argument of ownership of suit premises, is not proved. Therefore, this Court under jurisdiction under section 115 is not incline to entertain the present Civil Revision Application.

12. As regards the judgment preferred by the Applicant of Mangala Karadikar (supra) of the Supreme Court, in the fact of the said judgment there was clearly an agreement which was on record, the interpretation of said documents was held by the Court as an document of conducting agreement. The terms and conditions of the said agreement in the said proceedings have been reproduced, which clearly state that the shop and the materials situated in the premises, was taken for conducting by an agreement for a period of two years. Hence, the fact in the judgment of Mangala Karadikar (supra) were quite different then

the present proceedings. Admittedly in the present proceedings there is no written document called as 'conducting agreement'.

13. The second judgment referred by Applicant of the Supreme Court of Sarup Singh (supra). The said judgment is under the Land Acquisition Act and it is held if a decree is found to be nullity it can be challenged and interfered with, at any subsequent stage. The law as held by the Supreme Court in Sarup Singh is settled law however, the ratio laid down in Supreme Court Sarup Singh (supra). According to me, does not apply to the present proceedings.

14. Hence, the Civil Revision Application is dismissed. No cost.

15. At this stage, Applicant is seeking a stay to the execution of this Order. The Applicant is granted eight weeks time to vacate the suit premises, subject to the Applicant and all adult members of the family filing an usual undertaking within a period of one week from today.

(RAJESH S. PATIL, J.)