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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.6 OF 2024

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1.	Parmy Manufactory Private Limited, A Private Limited Company incorporated under the Companies Act, 1956 and having its registered office at 373, Veer Savarkar Marg, Prabhadevi, Mumbai – 400 028, through its Authorized Representative Ernest Braz Rodrigues authorized under a Resolution dated 14/2/2023 passed by Board of Directors.	
2.	Kothari Products Limited, A Company incorporated under the Companies Act, 1956 and having its office at 373, Veer Savarkar Marg, Prabhadevi, Mumbai – 400 028, through its Authorized Representative Ernest Braz Rodrigues authorized under a Resolution dated 14/2/2023 passed Board of Directors.	...Applicants ...Original Defendants
	Versus....	
	Hrishikesh Co-operative Housing Society Limited, a Co-operative Housing Society registered under the Maharashtra Co-operative Society Act, 1960, through its Secretary, having its Address at F.P. No.874, TPS-IV (Mahim) Veer Savarkar Marg, Dadar, Mumbai – 400 028.	...Respondent ...Original Plaintiff

Mr.Mukesh M. Vashi, Senior Counsel with and Ms.Sandhya Yadav Mr.P.Y. Shankar for the Applicants.

Mr.Rajesh A. Revankar i/b A.G. Revankar & Co. for the Respondent.

CORAM : RAJESH S. PATIL, J.
RESERVED ON : 16TH JANUARY, 2024.
PRONOUNCED ON: 30TH APRIL, 2024.

JUDGMENT :-

1. This Civil Revision Application is filed by the original lessee, challenging the concurrent findings recorded by the Trial Court and the Appellate Bench of the Court of Small Causes, Mumbai.
2. The Respondent is the original Plaintiff, who has filed the eviction suit against the Applicant / Defendant, under Section 41 of the Presidency Small Causes Court Act, 1882 (for short “PSCC Act”) being T.E. & R. No.1 of 2013.
3. The present Applicants appeared before the Trial Court and filed their written statement separately. After the issues were framed, the Respondents / Plaintiffs filed their evidence by examining their Committee member one Mr.Parag Balkrishna Dharap. The Applicants / original Defendants through their

advocate, cross-examined the said witness of the Plaintiffs. Thereafter the Applicants / Defendants examined two witnesses on their behalf, viz. Mr.Kamlesh Mehta, Director of Defendant No.1 and Mr.Rajesh Gaikwad. Both the witnesses of the Applicants were cross-examined by the Plaintiff's advocate.

4. After hearing the parties, the Trial Court by its judgment and order dated 24 October 2018, decreed the suit of the Plaintiffs and directed the Defendants to hand over possession of the suit premises.

5. Being aggrieved by the judgment and order dated 24 October 2018 passed by the Trial Court. the Defendants preferred an Appeal bearing Appeal No.125 of 2019, before the Appellate Bench of the Court of Small Causes, Mumbai. The said Appeal was heard by the Appellate Bench of the Court of Small Causes, Mumbai and by its judgment and order dated 7 December 2023, dismissed the Appeal filed by the Defendants. The present Civil Revision Application challenges the concurrent findings recorded by the impugned judgment and order passed by the Trial Court and the Appellate Bench of the Court of Small

Causes, Mumbai.

6. Mr.Mukesh M. Vashi, learned Senior Counsel appeared on behalf of the Applicants and made his submissions :

(i). Mr.Vashi submitted that the leased property was an open piece of land on which construction was made. Therefore, when the new Maharashtra Rent Control Act was enacted, the premises was land along with structure. Therefore, to the suit premises, Maharashtra Rent Control Act was applicable. Hence, the suit filed under Section 41 of the PSCC Act, was not maintainable.

(ii). Mr.Vashi submitted that it was the Plaintiffs case that the suit land was given for manufacturing purpose, as even the Plaintiffs had in their plaint and evidence submitted that the land was not given for manufacturing purpose. Therefore, Section 106 of the Transfer of Property Act was not applicable to the present proceedings.

(iii). Mr.Vashi submitted that the concerned Lease Deed was not produced by the Plaintiffs. As the Lease Deed was not produced, the suit filed on the basis of the Lease Deed was not

maintainable.

(iv). Mr.Vashi submitted that the Plaintiffs have themselves to prove their case and they cannot depend on the weakness of the Defendants. Hence, the suit could not be decreed.

(v). Mr.Vashi further submitted that T. E. & R. suit was filed by the erstwhile owner M/s.Venus Housing Enterprises under the Bombay Rent Act was pending.

(vi). Mr.Vashi submitted that it was the case of the Plaintiffs that the notice of termination was issued on 20 October 2011, however, in the said termination notice, only 15 days time was granted. Therefore, the notice did not comply with the statutory provisions as mentioned in Section 106 of the Transfer of Property Act. He further submitted that further notice dated 11 February 2012 and 29 May 2012, thereby mentioning that the termination notice dated 20 October 2011, should be treated as the notice for termination and six months period, as contemplated under Section 106 of the Transfer of Property Act should be calculated from the said date i.e. 20 October 2011, cannot be good in law.

7. Mr.Revankar appearing for the Respondents / landlords made his submissions :-

(i). Mr.Revankar submitted that the present Civil Revision application has been filed against the concurrent findings recorded by the Trial Court and the Appellate Bench of the Court of Small Causes, Mumbai, hence this Court in its jurisdiction under Section 115 of the Code of Civil Procedure should not entertain the same.

(ii). Mr.Revankar submitted that the relationship of the parties as lessor and lessee has been proved by the Plaintiff. Hence the suit was entertainable before the Court of Small Causes under Section 41 of the PSCC Act.

(iii). He submitted that since the Plaintiff had proved about issuance of notice of termination and already led evidence, the Trial Court had rightly decreed the suit. He submitted that the Civil Revision Application should be dismissed with costs.

(iv). He relied upon following judgments to buttress his submissions :-

- 1). 2000(1) Mah.LJ 23, in case of Nandlal Gunwani

vs. Ashok Bedekar,

2). 1995(1) Bom.C.R.377, in case of Bhika Cullianji & Co. vs. Avon Electric Co.,

3). 2016(1) Bom.C.R. 498, in case of Bombay Suburban Art & Craft Education Society & Ors.,

4). 1980(2) RCR (RENT) 302, in case of Kusum Bhimrao Patil vs. Javahar Lalchand Katariya & Ors.,

5). (2007) 2 Cal.LT 209 (HC), in case of Durga Shaw vs. Ramdhani Singh & Anr.,

6). AIR 2004 SC 175, in case of Narmada Devi Gupta vs. Birendra Kumar Jaiswal & Anr.,

7). In case of Rasesh Shipping Service & Co. vs. R.V. Akademik Boris Petrov & Ors.,

8). 1999 (1) All MR 556, in case of Sangli Bank Ltd. vs. Kanishka Investments Pvt. Ltd. & amp.,

9). 2006(12) SCC 552, in case of Avtar Singh & Ors. vs. Gurdial Singh & Ors. And

10).AIR 1999 SCC, in case of Vidhyadhar vs. Mankikrao.

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

9. The Plaintiff had filed the suit for eviction with regard to open piece of land, under section 41 of the PSCC Act.

10. The Plaintiff has brought on record the Deed of Conveyance and Deed of Rectification (Exhibit - 31 and Exhibit – 32), which was between Dr.Antonia D'Silva Trust and M/s.Venus Housing Enterprises; and Deed of Conveyance (Exhibit – 33 between M/s.Venus Housing Enterprises and Hrishikesh Co-operative Housing Society Limited, letter of attornment (Exhibit – 34), notice of termination (Exhibit – 35). The Plaintiff also examined their Committee Member one Parag Balkrishna Darap to prove their case.

11. The Trial Court held that the Plaintiff had proved that they are the landlords and Defendant is the lessee of the suit property. So also the notice of termination being a valid notice was proved by the Plaintiff. The Trial Court held that it had jurisdiction to entertain and try the suit under Section 41 of the PSCC Act. Hence the Trial Court had decreed the suit for eviction under Section 41 of the PSCC Act.

12. The Appellate Bench of the Court of Small Causes, Mumbai had also confirmed the findings recorded by the Trial Court by holding that the Defendant had no protection under the

Maharashtra Rent Control Act, as the suit premises was an open plot of land and the relationship between the parties was of the lessor and lessee. It was further held that the lease was legally terminated by the lessor and the Court of Small Causes had jurisdiction under Section 41 of the PSCC Act.

13. There is no dispute about the suit premises being an open plot of land on which the structure was allowed to be constructed.

14. Under the provisions of the Maharashtra Rent Control Act, for open piece of land, the lease is not protected under the Maharashtra Rent Control Act. Therefore, according to me, both the Courts were correct in recording the findings that the suit under Section 41 of PSCC Act was maintainable. In fact the Defendant in paragraph 14 of the written statement had admitted that the subject matter of the lease executed between them and the lessor Dr.Antonia D'Silva Trust, was vacant portion of the larger plot of land admeasuring 306 sq.ft. According to me, the admission made by the Defendant, was itself sufficient to hold that there was no protection to the

Defendant under the Maharashtra Rent Control Act, and hence the suit was maintainable under Section 41 of PSCC Act.

15. Apart from the admission made by the Defendant, the documents produced on record are proved being the Deed of Conveyance. The Plaintiff further proved the fact that they were lessors of the suit land. So also, the tenancy was attorned to as informed to the Defendant by a letter (Exhibit -34). On record, an acknowledgment to that effect was produced.

16. Therefore, the Defendant was unprotected tenant, as the tenancy has come to an end by the Plaintiff issuing eviction notice under Section 106 of the Transfer of Property Act. The Plaintiff by leading evidence in the form of examining their Committee Members have proved their case of eviction.

17. I find no infirmity in the concurrent findings recorded by the Trial Court and the Appellate Bench of the Court of Small Causes, Mumbai.

18. Hence the Civil Revision Application stands dismissed.
No costs.

(RAJESH S. PATIL, J.)

19. At this stage, Mr.PY. Shankar, learned counsel appears on behalf of the Applicants (original Defendants) seeks stay to the execution of this judgment and order for a period of eight weeks.

20. The interim protection granted to the Applicants on 16 January, 2024 is extended by eight weeks from today, subject to the directors of the Applicants, filing an usual undertaking within a period of one week from today before the Registry.

(RAJESH S. PATIL, J.)