

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL REVISION APPLICATION NO.29 OF 2024**

Narayan Janu Dhumal through its
constituted attorney-
Smt. Yashodabai Vishnu Sardesai

....Applicant

V/s.

Vithal Shankar Nalawade

....Respondent

Mr. Jagdish N. Jayale *for the Applicant.*

Mr. Pradeep Thorat *i/b. Ms Aditi Naikare for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

Dated : 12 July 2024.

P.C. :

1) By this Revision Application, Applicant challenges the Judgment and Order dated 14 December 2023 passed by the Appellate Bench of Small Causes Court dismissing Appeal No.175 of 2021 and confirming the decree dated 17 June 2013 passed by the Small Causes Court in R.A.E. & R. Suit No.158 of 2010.

2) I have heard Mr. Jayale, the learned counsel appearing for the Applicant and Mr. Thorat, the learned counsel appearing for the Respondent.

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3) After having considered the submissions canvassed by the learned counsel appearing for the parties, it is seen that R.A.E. & R. Suit No.158 of 2010 came to be decreed *ex-parte* on 17 June 2013. It appears that when the decree was put in execution, the Applicant filed an application under the provisions of Order IX Rule 13 of the Code of Civil Procedure, 1908 (**CPC**) for setting aside *ex-parte* decree. The said application came to be rejected by the Small Causes Court, which order was challenged in revision before the Appellate Bench of the Small Causes Court. The Revision Application was also rejected and accordingly the Writ Petition No.2322 of 2020 was filed by the Petitioner in this Court. When Writ Petition No.2322 of 2020 came up for hearing, this Court expressed disinclination to set aside the orders passed by the Small Causes Court and Appellate Bench. After noticing such disinclination, the Applicant withdrew Writ Petition No.2322 of 2020 with liberty to file a substantive Appeal against the decree. This is how the Appeal No.175 of 2021 came to be filed before the Appellate Bench challenging the decree dated 17 June 2013.

4) From the above position, it is clear that the Suit has been decreed in absence of any defence on the part of the Applicant. In the light of this position, what needs to be considered is whether Plaintiff produced evidence in support of the grounds for eviction sought in the Suit. I have gone through the affidavit of evidence filed by the Plaintiff and I am fully satisfied that sufficient evidence was led by the Plaintiff not only to establish existence of landlord-tenant relationship between Plaintiff and Defendant, but also the fact that the Defendant-tenant carried out unauthorised alterations and additions of permanent nature in the suit premises. The Plaintiff further led

evidence of subletting of the suit premises by Defendant to Yashodabai Sardesai, in whose name electricity connection appears to have been installed at the suit premises. It must also be observed that the entire litigation on behalf of Defendant, including the present Revision Application, is being prosecuted by Smt. Yashodabai Vishnu Sardesai as constituted attorney of Defendant, who is found to be the sublettee of Defendant. Therefore, subletting of the premises is correctly held to be proved. Plaintiff thus, conclusively proved before the Small Causes Court the grounds of unauthorised additions/alterations as well as subletting. This evidence led by Plaintiff has gone uncontroverted and Defendant's efforts to get the *ex-parte* decree set aside have not yielded favorable result on account of passing of orders by the Small Causes Court and its Appellate Bench and ultimately by this Court on 27 October 2021 when Writ Petition No.2322 of 2020 was dismissed as withdrawn. In absence of any evidence on the part of the Defendant, the Small Causes Court has rightly accepted the evidence led by Plaintiff in support of the claim raised in the Suit, while decreeing the same. No infirmity therefore can be traced in the decree passed by the Small Causes Court on 17 June 2013. The Appellate Bench has rightly decreed the Appeal filed by the Applicant.

5) Mr. Jayale would strenuously press into service the point that the land on which the suit premises are located is declared as slum and that in absence of permission under Section 22 of the Maharashtra Slum Areas (Improvement and Clearance) Act, 1956 (**Slum Act**), the Suit filed by the Plaintiff was not maintainable. It appears that when the decree was put in execution and notice of execution was served on the Applicant/Defendant,

he raised objection to the execution under the provisions of Order XXI Rule 22 of the Code raising the issue of non-procurement of permission under Section 22 of the Slums Act. Said objection has been repelled by the Execution Court by order dated 2 May 2019, which has been upheld by the Appellate Bench by dismissing Revision Application No.104 of 2019 filed by the Applicant. The said orders are further confirmed by this Court by dismissing Writ Petition No.2335 of 2020 filed by the Applicant by order dated 27 October 2021.

6) In my view therefore, no interference is warranted in the Judgment and Order dated 14 December 2023 passed by the Appellate Bench in exercise of revisionary jurisdiction under Section 115 of the Code. Civil Revision Application is accordingly rejected.

[SANDEEP V. MARNE, J.]

7) After the order is pronounced, Mr. Jayale, would pray for continuation of interim order passed by this Court on 12 January 2024. The request is opposed by Mr. Thorat. Considering the findings recorded in the order, I am not inclined to continue the interim order any further. Therefore, request for continuation of interim order is rejected.

[SANDEEP V. MARNE, J.]