

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL REVISION APPLICATION NO. 113 OF 2024**

Shri Dattaram Ramchandra Lad (since deceased)

1a) Shobha Dattaram Lad and Anr.

....Applicants

V/s.

Shri Naresh Atmaram Lad (since deceased)

1a) Salil Naresh Lad and Ors.

....Respondents

Ms. Manjiri Parasnis, for the Applicants.

Mr. Jaydeep Deo, for Respondent Nos.1(a), 1(b) and 2.

Mr. Amogh Singh a/w Akash Gupta i/b Jeet Gandhi, Advocate for Respondent No.5.

CORAM : SANDEEP V. MARNE, J.

Date : 7 AUGUST 2024.

P.C. :

1) This Civil Revision Application is filed challenging the decree dated 11 December 2023 passed by Appellate Bench of Small Causes Court by which Appeal No.426 of 2014 filed by Respondents – Plaintiffs has been allowed and suit filed by them is decreed by setting aside Judgment and Order dated 1 September 2014 passed by the learned Judge of Small Causes Court in L.E.& C Suit No. 123/ 159 of 2010.

2) I have heard Ms. Parasnis the learned counsel appearing for Applicants and Mr. Deo the learned counsel appearing for Respondent – Original Plaintiffs.

3) After having considered the submissions canvassed by the learned counsel appearing for the parties, it is seen that L.E.& C. Suit No.123 / 159 of 2010 was instituted by Plaintiffs seeking recovery of possession of suit premises from Defendant Nos.1 & 2 by branding them as gratuitous licensees. The suit came to be dismissed by the learned Judge of the Small Causes Court holding that Defendant No.1 is not occupying suit premises as gratuitous licensees. In the Appeal however, the decree is reversed by the Appellate Bench by repelling the contention of Defendant No.1 about acquisition of tenancy rights in respect of suit premises on the strength of he being legal heir / member of family of the original tenant Atmaram Lad.

4) Perusal of the order of the Appellate Bench would indicate that the inquiry conducted by it is essentially in respect of acquisition of tenancy under provisions of Section 5(11)(c) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bombay Rent Act) i.e. Residence with the tenant at the time of his death in capacity as tenants family. However, findings of fact recorded by the Trial Court would indicate that Defendant No.1 has been residing in the suit premises along with his family since 1970 onwards. Another finding recorded by the Trial Court is that Plaintiffs could not produce any documentary proof to prove their occupancy in the suit premises between 1962 to 1988. Thus, from the evidence on record, Trial Court has held that Defendant No. 1 alone was residing in the suit premises since the year 1970 at least till 1988. If Plaintiff's case of gratuitous licensee is accepted, the question would arise as to whether Defendant No.1 can be treated as tenant within the meaning of Section 15-A of the Bombay Rent Act since his possession of the suit premises as on 1 February 1973 is accepted by the Trial Court.

Conversely it also needs to be decided as to whether Defendant No.1 would fall within the expression 'other persons' for deriving title under tenant before 1 February 1973 under Section 5(11)(a) of the Bombay Rent Act.

5) Though the suit is filed after coming into effect of the Maharashtra Rent Control Act, 1999, reference to the provisions of Bombay Rent Act is essential on account of provisions of Section 7(15) in the Maharashtra Rent Control Act, 1999, under which a person becoming the tenant by virtue of provisions of the repealed Act automatically becomes tenant for the purpose of the MRC Act.

6) In my view, the above aspects are not examined that the Appellate Bench when a specific point was framed by it for determination as to whether Defendant Nos.1 and 2 had become tenant of the suit premises or not. Though Mr. Deo has attempted to canvassed submissions in support of his contentions that Defendant No.1 cannot be treated as tenant either under Section 5(10)(a) or under Section 15-A of the Bombay Rent Act, in my view, it would be inappropriate for this Court to decide this issue for the first time when the Appellate Bench has not applied its mind to the same. Therefore, it would be appropriate that the Appeal is decided a fresh in the light of the above observations. For that purpose, the Judgment and decree dated 11 February 2023 passed by the Appellate Bench needs to be set aside and Appeal No.426 of 2014 deserves to be remanded for fresh decision.

7) At this stage, Mr. Parasnis would highlight the aspect of the suit premises being undoubtedly occupied by Defendant No.1 and that since

the building has gone for redevelopment, possession of the suit premises is taken by developer from Defendant No. 1. She would further submit that the redeveloped building is now complete and on account of passing of decree dated 11 December 2023 by the Appellate Bench, the Defendant No.1 is unable to take over possession of the reconstructed premises. There can be no dispute to the position that the possession of the suit premises was with Defendant No.1, which is clear from the fact that prayer for recovery of possession was made in the suit.

8) In that view of the matter, since possession is taken from Defendant No.1 for carrying out redevelopment process, possession of the permanent alternate accommodation must also be handed over to the first Defendant during pendency of Appeal, which is being remanded for fresh decision.

9) I accordingly proceed to pass the following order.

(i) Judgment and decree dated 11 December 2023 passed by Appellate Bench of Small Causes Court in Appeal No.426 of 2014 is set aside;

(ii) Appeal No.426 of 2014 is remanded to the Appellate Bench from decision afresh in the light of observations made in the order;

(iii) During pendency of the Appeal, possession of permanent alternate accommodation shall be handed over to Applicant Nos.1A and 1B, who are legal heirs the first Defendant, subject to decision of the Appeal. They shall not create any third party interest in such alternate accommodation.

10) With the above observations, the Civil Revision Application is disposed of. All contentions are parties on merits are kept open to the decided by the Appellate Court.

11) Considering the fact that the Appeal was lodged in the year 2014, the Appellate Court shall accord due priority for its expeditious disposal.

[SANDEEP V. MARNE, J.]

GAYATRI
RAJENDRA
SHIMPI

Digitally signed
by GAYATRI
RAJENDRA
SHIMPI
Date: 2024.08.08
12:24:16 +0530