

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

CIVIL REVISION APPLICATION NO.296 OF 2024

Manilal Ratanshi Gada & Anr.

....Applicants

V/S

Kanhaiyalal Radhavallabh Agrawal & Ors.

....Respondents

Mr. Anvil S. Kalekar *for the Applicants.*

Mr. Ajay G. Khaire *for Respondents.*

CORAM: SANDEEP V. MARNE, J.

DATE : 11 JUNE 2024.

P.C.:

1 This Application is filed under Section 115 of the Code of Civil Procedure, 1908 invoking revisional jurisdiction of this Court and challenging the judgment and order dated 16 February 2024 passed by the Appellate Bench of the Small Causes Court at Mumbai thereby dismissing the Appeal filed by Applicants and confirming the judgment and decree dated 10 October 2011 passed by the Court of Small Causes, Mumbai in RAE Suit No.505/778 of 2007. The Appellate Bench of the Small Causes Court has confirmed the decree of eviction on the ground of subletting.

2 I have heard Mr. Kalekar, the learned counsel appearing on behalf of the Applicants. He would submit that the Trial and the Appellate Court have erred in directing eviction of the Applicants on the ground of subletting. That the Applicants, who are original Defendant Nos. 9 and 10,

are not occupying any portion of the suit premises and that an erroneous conclusion is reached that suit premises are sublet to them. That the Trial and the Appellate Court have erred in relying on electricity connection for the purpose of inferring the act of subletting, when in fact the concerned electricity connection is issued in respect of adjoining premises, not forming part of the suit premises. He would therefore submit that what is occupied by the Applicants are adjoining premises and that therefore there is no question of suit premises being sublet to the Applicants

3 I have also heard Mr. Khaire, the learned council appearing for the original Plaintiffs, who would oppose the Revision Application and support the concurrent findings recorded by the Trial and the Appellate Court.

4. After having considered the submissions canvassed by the learned counsel appearing for the rival parties, it is seen that original Plaintiffs instituted RAE & R Suit No.505/778 of 2007 in the Court of Small Causes at Mumbai seeking recovery of possession of the suit premises being Room admeasuring 90 square feet on Ground Floor in the Building Vrindavan Bhavan situated at 247/249, Kalbadevi Road, Mumbai – 2 against the original Defendants. During dependency of the Suit, the plaint was amended by insertion of paragraph 8(a) therein, in which Plaintiffs averred that in breach of injunction order dated 15 June 2007 and without written permission of the Plaintiffs, Defendant Nos.6 and 8 illegally parted with possession of the suit premises and handed over possession thereof on leave and license basis to Defendant No.9 and 10. Plaintiffs averred that electricity meter in the suit premises was also illegally and unlawfully transferred in the name of Defendant No.10 and that Defendant Nos. 6 to

8 were charging exorbitant monthly compensation from Defendant Nos.9 and 10 and thereby profiteering from the suit premises. Defendant Nos.6 and 8 filed Additional Written Statement and denied the contents of amended paragraph 8(a) of the plaint. They contended in the Additional Written Statement that Defendant Nos.9 and 10 are doing their business in the premises opposite to the suit building. It appears that Defendant Nos.9 and 10 appeared in the Suit and filed their Written Statement contending that Defendant No.6 and 8 continued to be in use occupation and possession of the suit premises. They also contended that they were doing business opposite to the suit building and were not using the suit premises in any manner.

5 Mr. Giridhari Kanhaiyalal Agrawal led evidence on behalf of the Plaintiff, in which it is stated by forging the signature of his father, Defendant Nos.9 and 10 entered their name in capacity as occupier of the suit premises. Several allegations of forgery are levelled in the evidence affidavit of the said witness against Defendant Nos.9 and 10. Additionally PW1 produced various documents relating to electricity connection obtained by Defendant Nos.9 and 10 from BEST Undertaking, which were secured under the Right to Information Act, 2005. Transfer form signed by Defendant No.10 was produced and fabricated rent receipt dated 2 October 2006 in respect of the suit premises in the name of Defendant No.10 was also produced. The witness gave evidence that the said rent receipt does not bear the signature of the Plaintiff. Furthermore, letter dated 3 October 2006 of Defendant No.6 for transfer of electric meter in the name of Defendant No.10 was also produced. The witness also relied upon letter dated 4 June 2007 relating to electric meter addressed to Defendant No.10

at the address of the suit premises. This is how PW1 lead specific evidence with regard to provision of electric meter in the name of Defendant No.10 in the suit premises.

6 After having considered the evidence produced on record, in my view, Plaintiff successfully proved before the Trial Court that Defendant Nos. 9 and 10 are in use and occupation of the suit premises and that they secured electricity connection from BEST Undertaking in the name of Defendant No.10. The contention of the Mr. Kalekar that the electricity connection is in respect of adjacent premises cannot be accepted. In the Written Statement, Defendant Nos.9 and 10 contended that they carry on business in premises opposite to the suit building. If this was the case, there was no necessity of producing rent receipt in the name of Defendant No.10 before BEST Undertaking for transfer of the electricity meter.

7 After considering the overall conspectus of the case I am of the view that findings of fact recorded by the Small Causes Court and its Appellate Bench are well supported by evidence on record. No interference in those findings is warranted in exercise of revisional jurisdiction by this Court under section 115 of the Code. The Revision Application is bereft of merits and warrants dismissal. The Civil Revision Application is accordingly dismissed without any orders as to costs.

(SANDEEP V. MARNE, J.)

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