

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL REVISION APPLICATION NO.346 OF 2024****Jagatbir Aunil Das****....Applicant****V/s.****M/s. S.T.C. Movers Pvt. Ltd.****....Respondent**

Mr. Durgaprasad Sabnis with Mr. Harsh Pathak and Mr. Hiten Lala for the Applicant.**None for the Respondents.**

CORAM : SANDEEP V. MARNE, J.**Dated : 4 July 2024.****ORDER:-**

1) The Applicant has filed this Civil Revision Application challenging the Judgment and Order dated 9 May 2024 passed by the Additional Chief Judge, Small Causes Court at Mumbai, dismissing the appeal preferred by the Applicant and confirming the Judgment and Decree dated 16 October 2010 passed in R.A.E. Suit No.669/1106 of 2000.

2) The Trial Court, by its decree dated 16 October 2010, has decreed the Suit filed by the Respondent -Plaintiff on the ground of change of user under Section 13(1)(k) of the Bombay Rents, Hotel and Lodging House Rates

MEGHA
SHREEDHAR
PARAB

Digitally signed by
MEGHA
SHREEDHAR PARAB
Date: 2024.07.10
10:27:44 +0530

Control Act, 1947 (**Bombay Rent Act**) directing the Applicant /Defendant to deliver vacant and peaceful possession of the suit premises.

3) Flat No.101 situated on the first floor alongwith garage on the ground floor of the building-Navin Asha Co-operative Housing Society Ltd., 126, Dadasaheb Phalke Road, Dadar, Mumbai- 400 014 are the suit premises. Mr. A.K. Das was inducted as monthly tenant in respect of the suit premises in the year 1964. It is the Plaintiff's case that Flat No.101 was let out for residence whereas the garage was let out for the purpose of parking vehicle. The original tenant-Mr. A.K. Das passed away on 30 August 1990. Thereafter his son (Defendant)claims tenancy rights in respect of the suit premises. The Plaintiff served notice dated 27 December 1995 on the Defendant alleging that the suit premises were being used for commercial purpose, that the premises were closed and not being used for the purpose for which they were let out and that Plaintiff was in *bonafide* need of the premises.

4) The Plaintiff instituted R.A.E. Suit No.669/1106 of 2000 in the Court of Small Causes against the Defendant seeking recovery of possession of the suit premises on the ground of change of user alleging that the Defendant had commenced readymade garments business in the name and style as M/s. Gallops Authentic Jeans and M/s. Emperol Sales and Distributors and was also using the flat as his office. The Plaintiff also alleged that the Defendant carried out unauthorised construction, additions and alternations in the suit premises. Plaintiff also claimed that the business activities of Defendant was a source of annoyance and nuisance to the members of the Housing Society.

The Suit was resisted by the Defendant by filing written statement *inter alia* raising the ground of limitation contending that the change of user in respect of the suit premises was permitted to the original Defendant-Mr. A.K. Das. Defendant denied the allegations of non-user, unauthorised additions /alterations and *bonafide* need of the Plaintiff. The Trial Court proceeded to decree the Suit by Judgment and Order dated 16 October 2010. The Trial Court rejected the grounds of unauthorised additions/ alterations and nuisance. The Suit was however decreed on the ground of change of user. The Defendant was directed to handover possession of the suit premises to Plaintiff on or before 17 January 2011.

5) The Defendant filed Appeal No.1 of 2011 before the Appellate Bench of the Small Causes Court challenging the decree dated 16 October 2010. The Appellate Bench has however, dismissed the appeal by its Judgment and Order dated 9 May 2024 and has confirmed the Decree dated 16 October 2010. It appears that by a separate order passed on 9 May 2024, the Appellate Bench has stayed the Decree dated 16 October 2010 for a period of 8 weeks. Aggrieved by the Decrees passed by the Appellate Bench and the Trial Court, the Applicant has filed the present Civil Revision Application.

6) I have heard Mr. Sabnis, the learned counsel appearing for the Applicant. He would submit that the Trial Court and the Appellate Bench have failed to appreciate that the Suit filed by the Plaintiff *qua* the allegations of change of user was barred by limitation. Relying on the notice dated 27 December 1995, he would submit that Plaintiff specifically admitted therein that the change of user was done by the original tenant Mr. A.K. Das. That

since the original tenant expired on 30 August 1990, the allegation of change of user would be before 30 August 1990 and that the Suit instituted by the Plaintiff on 7 February 2000 was clearly barred by limitation. He would further submit that ample evidence was produced before the Trial Court in support of the contention that the suit premises have always been used by the Defendant and his father for commercial purposes. He would refer to the affidavit of evidence of Defendant alongwith which copies of several documents demonstrating commercial use of the suit premises right since 1978. He would submit that the use of the premises for commercial purpose was thus with the consent of the landlord, who never raised any objection for such use. He would further submit that for computing the period of limitation with regard to Decree for eviction on the ground of change of user, the starting point would be the date of acquisition of the knowledge by the Plaintiff of change of user. That in the present case, it is sufficiently proved that Plaintiff was aware about change of user right since inception and that therefore, the Suit filed in the year 2000 was clearly barred by limitation. In support of his contention, he would rely upon judgment of the Gujarat High Court in ***Luhar Jagjivanbhai Ramjibhai and Others vs. Mukundlal Pitambardas Shah***,¹. He would therefore submit that the finding recorded by the Trial Court and the Appellate Bench on the issue of change of user are perverse.

7) I have considered the submissions canvassed by Mr. Sabnis and have gone through the concurrent findings recorded by the Trial Court and the Appellate Bench. Section 13 of the Bombay Rent Act did not recognize the

1. 553 Bom R.C. 187

ground of change of user independently and the ground of change of user was implied in provisions of Section 13(1)(k) of the Act, which provided thus:-

Section 13(1)(k)

that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit; or

8) Thus, use of premises only for the purpose for which they are let out is one of the mandatory requirements and in the event of violation of that requirement, decree for possession of premises can be sought under Section 13(1)(k) of the Bombay Rent Act. Careful perusal of Section 13(1)(k) would indicate that what the Plaintiff needs to prove is non-use, without reasonable cause, of the tenanted premises for the purpose for which they were let, for a continuous period of six months immediately preceding the date of the Suit. Therefore, even if use of the tenanted premises for the purpose other than the one for which they are let is established during the period of six months before filing of suit, the starting point of time for such change of use becomes irrelevant.

9) There is no dispute to the position that Defendant was using the suit premises for commercial purpose for a period of six months immediately preceding the date of filing of the Suit. In my view therefore alleged change of use by Defendant in the year 1978 or date of acquisition of knowledge about said change of user by the Plaintiff becomes irrelevant for the purpose of computing the period of limitation. Once it is proved that the change of use existed six months prior to filing of the Suit, the suit would become

maintainable and not hit by limitation. The Appellate Bench has rightly held that use of premises for the purpose other than the one for which they are let is a recurring cause of action and the suit for eviction can be filed at any stage.

10) Mr. Sabnis has sought to contend that Section 13(1)(k) uses the expression 'without reasonable cause' and that once acquisition of knowledge of change of user by the landlord is proved, it cannot be contended that such use is without reasonable cause. In this regard reliance is placed on judgment of the learned Single Judge of the Gujarat High Court in ***Luhar Jagjivanbhai Ramjibhai*** (supra) in which it is held as under:-

5. ... In the present case, it is not possible to hold that the premises have not been used without reasonable cause for the purpose for which they were let. The reasonable cause for using the premises for the purpose of business is clearly established by the conduct of landlord over a number of years and the implied consent of the landlord to the same. This aspect of reasonable cause for alleged challenge of user clearly disentitles the landlord from recovering possession. In order to succeed under clause (k), the landlord has to prove not only non-user or change of user but has also to prove that it is without reasonable cause. In the present case the landlord has utterly failed even to allege and prove absence of reasonable cause. On the other hand the reasonable cause is duly established by long user for the purpose of business to the knowledge of the landlord. Therefore, the opponent landlord is not entitled to the decree for possession on this ground and the lower court has clearly committed an error of law in this respect.

11) In my view the judgment of the Gujarat High Court in ***Luhar Jagjivanbhai Ramjibhai*** (supra) cannot be read in support of an absolute proposition that in every case, knowledge on the part of the landlord about change of use would obviate decree for eviction under Section 13(1)(k) of the Act. In the case before the Gujarat High Court, it was proved that right from inception, the premises were always being used by the tenant for the purpose of business as blacksmith, though the same were let out for use as *vakhar*

(godown) as per the rent note executed on 13 March 1956. In the present case the suit premises are let out in the year 1964 whereas Defendant could prove its use for commercial purpose only after 1978. Thus, this is not a case where the suit premises are being used for commercial purpose right from inception. Therefore, the judgment of the Gujarat High Court would not apply to the facts of the present case.

12) Mr. Sabnis has relied upon notice dated 27 December 1995 addressed on behalf of the Plaintiff in support of his contention that change of user during lifetime of original Defendant Mr. A.K. Das is admitted in the said notice. Even if, this position is accepted, the same would still not throw the Suit out of limitation for validity of reasons. Firstly, the original Defendant Mr. A.K. Das passed away on 30 August 1990 and the Suit filed on 7 February 2000 would not automatically hit by limitation. Secondly, change of user, constitutes recurring cause of action. Thirdly, use of the premises for commercial purpose for a period of six months prior to the date of inception of Suit is not disputed by the Defendants.

13) In my view therefore, the impugned Decrees passed by the Trial Court and the Appellate Bench do not suffer from the vice of perversity nor it can be said that concurrent findings recorded by both the Courts below are such that interference at the hands of this Court in exercise of revisionary jurisdiction under Section 115 of the Code of Civil Procedure, 1908, is warranted. The Applicant does not dispute the position that suit premises are being used for commercial purpose. It is not the case of the Applicant that the suit premises were let out since inception for commercial purposes.

Change of use is thus virtually admitted. Even if it is assumed that the Plaintiff acquired knowledge of such change of use at any point of time, the plea of waiver cannot be raised against the Plaintiff in absence of written consent granted by landlord for change of use.

14) The impugned Decrees passed by the Trial Court and the Appellate Bench are thus unexceptionable. Civil Revision Application is accordingly dismissed without any orders as to costs.

15) After the order is pronounced, Mr. Sabnis would pray for continuation of stay order passed by the Appellate Bench on 9 May 2024 for a period of eight weeks. Considering the position that the Defendant is in possession of the tenanted premises for a considerable period of time and since the decree of the Trial Court was stayed during the pendency of the appeal, the stay granted by the Appellate Bench on 9 May 2024 shall continue to operate for a period of eight weeks from today.

[SANDEEP V. MARNE, J.]