IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 571 OF 2024

Mr. Sumant Kumar Shyamdeoram @ Nirala } ***....Applicant/ Orig. Defendant***

: Versus :

Mr. Arif Amir Shaikh } ***....... Respondent/ Orig. Plaintiff***

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Mr. Prerak Sharma *with Mr. Hamid Ansari with Mr. Mehboob Shaikh with Mr. Dawood Khan i/by. Enamul Haq Khan, for the Applicant.*

Mr. J.S. Shukla, *for the Respondent.*

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CORAM : SANDEEP V. MARNE, J.

DATED : 11 November 2024.

JUDGMENT:

1) Revision Applicant has invoked revisionary jurisdiction of this Court under Section 115 of the Civil Procedure Code (**Code**)for setting up a challenge to the decree dated 4 October 2024 passed by the Appellate Bench of the Small Causes Court dismissing PSCC Appeal No.49/2023 and confirming the eviction decree dated 20 July 2023 passed by the Small Causes Court passed in L.E. & C Suit No.199/218 of 2014. The Revision Applicant is treated as the Licensee of the Respondent/Defendant and his eviction is ordered by the Small Causes Court by exercising jurisdiction under Section 41 of the Presidency Small Causes Courts Act (**PSCC Act**). The

Revision Applicant claims to be the owner of the suit premises and is aggrieved by the findings recorded by the Trial and the Appellate Courts that he is the licensee in respect thereof and has accordingly challenged decrees passed by the Trial and the Appellate Courts in the present Revision Application.

2) According to the Plaintiff, he is the owner of Plot bearing CTS No.3322, Survey No.120, Hissa No.3 admeasuring 596.6 sq. mtrs together with structure standing thereon by virtue of Agreement for Sale dated 4 August 1997, as well as irrevocable Power of Attorney dated 4 August 1997. According to Plaintiff out of the property purchased by Agreement for Sale and Power of Attorney dated 4 August 1997, he granted license in respect of Shop No.2 admeasuring 500 sq. ft (**suit shop**) to the Defendant by Agreement of Leave & License dated 2 January 2008 for a period of 33 months commencing from 2 January 2008 and ending on 1 October 2010. According to Plaintiffs, the tenure in respect of the license of the suit shop was further extended by 22 months by Leave & License Agreement dated 3 January 2011. The tenure of the license expired on 14 August 2012, but the Defendant failed to vacate possession of the suit shop. Accordingly, Plaintiff filed L.E. & C. Suit No.199/218 of 2014 before the Small Causes Court at Bombay seeking recovery of possession of the suit shop under the provisions of Section 41 of the PSCC Act. Plaintiff also claimed amount of Rs.1,20,000/- being the arrears of compensation for 24 months at the rate of Rs.5,000/- per month. Defendant appeared in the suit and filed Written Statement denying ownership of the Plaintiff in respect of the suit premises. Defendant pleaded that the Agreement for Sale and Power of Attorney dated 4 August 1997 are forged and fabricated documents. Defendant claimed ownership in respect of the suit premises. He claimed that the premises in his possession comprised of residential ground plus upper floor owned by his wife.

3) Based on pleadings filed by the parties, the Trial Court framed issue as to whether Defendant is a licensee in respect of the suit shop, whether the period of license had expired and whether the Plaintiff was entitled to recover possession of the suit shop and to recover arrears of compensation of Rs.1,20,000/-. Both sides led evidence. Plaintiff and Defendant examined themselves and relied upon several documents. After considering the pleadings, documentary and oral evidence, the Small Causes Court proceeded to decree the suit holding that Plaintiff proved that Defendant is his licensee in respect of the suit shop. The Small Causes Court accordingly directed the Defendant to handover possession of the suit shop to the Plaintiff with further direction to pay amount of Rs.1,20,000/- towards monthly compensation with further direction to conduct enquiry into mesne profits under the provisions of Order 20 Rule 12 of the Code.

4) The Respondent/Defendant preferred PSCC Appeal No. 49/2023 before the Appellate Bench of the Small Causes Court challenging the decree dated 20 July 2023. The Appellate Court has however dismissed Defendant's Appeal by its judgment and decree dated 4 October 2024, which is the subject matter of challenge in the present Revision Application.

5) Mr. Sharma, the learned counsel appearing for the Revision Applicant would submit that the Trial and the Appellate Courts have erred in accepting Plaintiff's case that Defendant is his licensee. He would submit that Plaintiff cannot be treated as an owner in respect of the suit shop. That in support of his claim of ownership, Plaintiff has relied upon insufficiently stamped and unregistered Agreement for Sale which does not confer any title in his favour. He would rely upon decree dated 18 May 2011 passed by the City Civil Court in S.C. Suit No.2858/2009 by which Plaintiff's suit against the vendors was dismissed by holding that he did not become owner or occupier in respect of the premises allegedly sold by Agreement

dated 4 August 1997. That the said decree conclusively disproves Plaintiff's claim of ownership in respect of the suit shop. In support of his contention of non-vesting of title on the strength of unregistered and unstamped document, he would rely upon the judgment of the Apex Court in ***Suraj Lamp and Industries Private Limited (2) through Director Versus. State of Haryana and Anr.***[1]

6) He would further submit that the structure has been constructed by the Defendant's wife in the year 2001 and therefore there is no question of Defendant entering into any License Agreement with the Plaintiff. That both the License Agreements of 2008 and 2011 are again fabricated documents. He would submit that in respect of similar attempt made by the Plaintiff to evict occupier of another structure by relying upon false and fabricated documents, he is being prosecuted before the Court of Metropolitan Magistrate, 37th Court, Bandra. That Plaintiff is thus habitual fabricator of documents and has accordingly fabricated not only the Agreement for Sale and Power of Attorney dated 4 August 1997, but also the License Agreements of 2008 and 2011.

7) Mr. Sharma would highlight the error committed by the Trial Court in assuming that the Defendant gave admission of deposit of Rs.1,00,000/- with the Plaintiff and letting out the suit premises. By taking me through the cross-examination of the Defendant, he would submit that the Defendant in fact denied having paid Rs.1,00,000/- to Plaintiff or the allegation of letting out premises to him. He would thus submit that the decree of the Trial Court suffers from complete non-application of mind. That the Appellate Court has erred in not setting aside the Trial Court's decree. So far as the decree of the Appellate Court is concerned, Mr. Sharma would submit that the Appellate Court has erred in relying on the

[1] (2012) 1 SCC 656

alleged Affidavit of examination-in-chief dated 7 March 2011 shown to have been filed in S.C. Suit No. 2858/2009. That the said Affidavit of evidence was not filed by the Defendant. That Defendant pleaded as well as gave evidence about he not filing the said Affidavit of evidence. He would invite my attention to the MARJI Application No.113/2023 filed against the Plaintiff seeking action for perjury for impersonating the Defendant in S.C. Suit No. 2858/2009. Mr. Sharma would accordingly pray for setting aside the decrees passed by the Trial and the Appellate Courts.

8) The Revision Application is opposed by Mr. Shukla, the learned counsel appearing for the Respondent/Plaintiff. He would submit that the Trial and Appellate Courts have rightly appreciated and reappreciated the evidence respectively and in absence of any gross errors being committed by both the Courts, this Court would be loathe in interfering in the concurrent findings in exercise of its revisionary jurisdiction. He would strenuously rely upon the evidence led by the Defendant in S.C. Suit No.2858/2009 admitting that he is the licensee in respect of the suit shop. He would accordingly pray for dismissal of the Revision Application.

9) Rival contentions of the parties now fall for my consideration.

10) This is a peculiar case where there is basic dispute about relationship and status of Plaintiff and Defendant qua the suit property. Plaintiff claims ownership in respect of the suit shop and contends that Defendant was inducted as licensee. Plaintiff's claim of ownership is disputed by the Defendant, who claims that his wife is the owner in respect thereof. Defendant therefore denies that he is Plaintiff's licensee. According to Plaintiff, he granted license in respect of the suit shop in favour of the Defendant on 2 January 2008 and 3 January 2011 for 33 + 22

months. The Defendant has denied execution of the said License Agreements.

11) Further peculiarity in the present case is on account of two previous litigations initiated by both the Plaintiff as well as the Defendant. It appears that the Plaintiff was claiming ownership in respect of larger portion of land admeasuring 596.6 sq. mtrs which was allegedly purchased by him from Mr. Shah Feroz Latif and Mr. Kurshid Baig by Agreement for Sale dated 4 August 1997. Plaintiff apprehended dispossession from the said larger portion of land by the vendors-Shah Feroz Latif and Mr. Kurshid Baig and accordingly filed S.C. Suit No. 2858/2009 before the City Civil Court for injunction from dispossession without following due process of law. The said suit came to be dismissed by decree dated 11 May 2011, *inter alia*, holding that he was not put in possession of the suit shop by virtue of Agreement dated 4 August 1997. Defendant relies heavily on the decree dated 11 May 2011 for disputing Plaintiff's ownership of the suit shop.

12) Defendant's wife initiated a separate litigation against the Municipal Corporation by filing L.C. Suit No. 394/2014 seeking protection from demolition of the suit shop. In that suit, Defendant's wife claimed ownership in respect of the structure. Thus, filing of the above two suits by Plaintiff and Defendant make the present case slightly peculiar. Defendant heavily relies upon decree dated 11 May 2011 dismissing Plaintiff's S.C. Suit No. 2858/2009 and claims that Plaintiff's ownership in respect of the suit shop is clearly negatived. He also relies upon proceedings in L.C. Suit No. 394/2014 to prove that his wife is the real owner in respect of the structure in question. The effect of the Leave and License Agreements executed on 2 January 2008 and 3 January 2011 is required to be considered in the light of the above conflicting stands adopted by the parties.

13) While Defendant attempts to join issue with regard to the ownership of the suit shop, in my view, while conducting limited enquiry relating to eviction of a licensee in a suit filed under Section 41 of the PSCC Act, it is not necessary to delve deeper into the aspect of ownership. All that needs to be proved is whether Defendant is a licensee or not. Plaintiff has relied upon License Agreements dated 2 January 2008 and 3 January 2011 execution of which is flatly denied by the Defendant. While Defendant disputes Plaintiff's claim of ownership by submitting that unregistered and unstamped Agreement for Sale dated 4 August 1997 does not invest title in Plaintiff's favour, he himself does not rely upon any document either in his own name or in the name of his wife in support of his claim of ownership. There is absolutely no document on record to support Defendant's claim of ownership of the suit shop by his wife.

14) It appears that the Small Causes Court has committed an error in reading the cross-examination of the Defendant. Though the Defendant flatly denied having paid Rs.1,00,000/- to the Plaintiff or his induction in the suit premises by the Plaintiff, the Trial Court has erroneously held in paras-28 and 29 of its judgment that Defendant admitted letting out of the suit premises by Plaintiff to him. However, the Appellate Court has not gone into the said non-existent admission and has instead concentrated on Affidavit of evidence filed by the Defendant in S.C. Suit No. 2858/2009. It would be apposite to reproduce the said Affidavit dated 7 March 2011 :

> I, MR. SUMANT KUMAR SHYAMDEO RAM, aged 41 years, at Azad Nagar Road, Behind M.H.B. Colony, behind Mamta Bakery, Malwani Malad (West), Mumbai 400- 095, the P.W. 1 do hereby state on solemn affirmation as under:-
> 1. I, say that I have been inducted as a licensee of the plaintiff abovenamed in respect of the shop premises situated at Azad Nagar Road, behind M.H.B. Colony, behind Mamta Bakery, Malwani Malad (West), Mumbai 400-095 and I have acquired the said shop premises by

way of entering into an agreement of leave and license agreement dated 2/1/2008 for a period of 33 months and the possession of the said shop is given to me by the plaintiff.
2. I, say that by virtue of the said leave and license agreement I am in possession of the said shop premises and for the same I have paid a sum of Rs 1,00,000/- as security deposit to the plaintiff and also paying compensation of Rs 5,000/- per month, I say that the said agreement is annexed at Serial No 5 of the compilation of documents and already marked as Exhibit by this Hon'ble Court.

3. I, further say that the said leave and license agreement was for a period of 33 months commencing from 2/1/2009 and expiring on 1/10/2010, I further say that thereafter after the expiry of the said term of 33 months is, on 1/10/2010, I have entered into a fresh agreement for leave and license agreement with the plaintiff vide agreement dated 3/1/2011 for an additional period of 22 months for a sum of Rs 1,00,000/- as security deposit and also paying compensation of Rs. 5,000/- per month. I say that the new agreement for leave and license is also on record and is annexed at Serial No 5 of the compilation of documents and already marked as Exhibit by this Honble Court.

4. I, further say that the plaintiff is in possession of the suit plots of land alongwith structures standing thereupon i.e. on plot bearing survey No 120, Hissa No 3, corresponding C.T.S. No 3322 part adm. Area 7.25 guntha i.e. 877 sq.yard equivalent to 596.6 sq.mtrs approximately of village Malvani, Taluka Borivali, M.S.D. situated at Alif welfare society.

Whatever is stated hereinabove is true and correct to the best of my own knowledge and belief.

Mumbai dated 7th day of March 2011

15) Thus, there are specific admissions in the said Affidavit dated 7 March 2011 that Defendant executed license agreements with Plaintiff. Faced with the said Affidavit of examination dated 7 March 2011 (which was pleaded by the Plaintiff in para-9 of the Plaint), the Defendant chose to plead in the Written Statement that he never filed any evidence in S.C. Suit

No. 2858/2009. In para-7 of the Written Statement, he pleaded that he was totally unaware of the proceedings of the said S.C. Suit No.2858/2009, that he never appeared in Court nor gave any deposition. He continued his stand in the evidence as well.

16) However, perusal of the deposition recorded in the Court on 9 March 2011 in S.C. Suit No. 2858/2009 would indicate that the person named 'Sumant Kumar Shyamdeo Ram' aged 41 years personally remained present before the Court, was administered oath and gave evidence about statements made in the Affidavit of evidence. It is too far-fetched to rely upon bald denial of the Defendant that he neither signed the said Affidavit nor appeared before the Court nor gave any deposition in S.C. Suit No. 2858/2009. There are variety of reasons why I am unable to accept the bald denial by Defendant in respect of the Affidavit of evidence dated 7 March 2011. Plaintiff pleaded about the said Affidavit in para-9 of the plaint. Defendant thus acquired knowledge about deposition given in his name in S.C. Suit No. 2858/2009 on receipt of suit summons and filed Written Statement on/or about 8 October 2014 denying execution of the said Affidavit. However, for a period of 9 long years thereafter, he did not initiate any proceedings in respect of the claim of impersonation and Plaintiff setting up another person as 'Sumant Kumar Shyamdeo Ram'. It is only after the suit got decreed on 20 July 2023 that Defendant filed MARJI Application No.113/2023 on 18 September 2023 seeking action under the provisions of Section 340 of the Criminal Procedure Code against the Plaintiff. This conduct of the Defendant makes his story of non-deposition before the City Civil Court in S.C. Suit No.2858/2009 totally unbelievable.

17) S.C. Suit No. 2858/2009 was filed by the Plaintiff against the erstwhile owners who were seeking to dispossess him. Plaintiff wanted to prove his possession in respect of the suit property involved in S.C. Suit

No.2858/2009. In that suit, there was no reason for Plaintiff to set up a fictitious person as ‘Sumant Kumar Shyamdeo Ram’ to give evidence about the said person being in possession of the suit property as a licensee. It cannot be said that the Plaintiff was clairvoyant enough to imagine that the licensee would not vacate the premises at the end of tenure of license and he will have to file a suit in future for licensee’s eviction. It is therefore unbelievable that the Plaintiff would set up another person as ‘Sumant Kumar Shyamdeo Ram’ for extracting an admission of licensee by imagining in 2011 that he may have to file a suit against the Defendant in the year 2014. Therefore, the theory set up by the Defendant that he did not give any evidence in S.C. Suit No. 2858/2009 is totally unbelievable.

18) Thus, there are two major factors against the Defendant in the present case. Firstly, he has no document to support the claim of ownership by his wife. As against this, the Plaintiff has some semblance of document to prove his ownership in respect of the land on which the suit shop stands. Secondly, Defendant’s defence of not leading evidence in S.C. Suit No.2858/2009 is unbelievable and there are specific admissions given on Affidavit of evidence that Defendant is a licensee. In my view, the above two factors are sufficient for the purpose of holding Defendant as a licensee in respect of the suit shop. This Court is unable to draw any inference of the two License Agreements of 2008 and 2011 to be fabricated documents only on account of charge framed against the Plaintiff in unrelated case of alleged forgery. There is no material on record to prove that Plaintiff has fabricated the said License Agreements. Defendant has admitted that the signature appearing on license agreements are similar to his signature, but he denied that the agreements bear his signatures. In support of his claim of construction of suit shop by his wife and occupation thereof from 2001, Defendant did not produce any documentary evidence. If indeed he or his wife were residing in the premises since 2001 as owners, there ought to be

some document of residence since 2001. Therefore Defendant's claim of ownership of the suit shop appears to be unbelievable. On the contrary, Defendant has no semblance of documents to prove his claim of ownership in respect of the suit shop. Thus, possession by Defendant is clearly linked to the first License Agreement dated 2 December 2008. Since tenure of both the License Agreements expired on 14 August 2012, the Defendant is liable to vacate possession of the suit shop.

19) Since detailed enquiry into title is not necessary for deciding the suit under Section 41 of the PSCC Act for eviction of the licensee, reliance of Mr. Sharma on judgment of the Apex Court in ***Suraj Lamp and Industries Private Limited*** (supra) is misplaced. In fact the defence taken by the Defendant clearly attracts provisions of Section 116 of the Indian Evidence Act, 1972 under which he is estopped from questioning the title of the Plaintiff.

20) The conspectus of the above discussion is that Defendant has rightly been held to be licensee of the Plaintiff in respect of the suit shop. The Trial and the Appellate Courts have rightly decreed the suit of the Plaintiff. There is no error in exercise of jurisdiction. Therefore, there is no warrant for interference in the concurrent findings recorded by the Trial and the Appellate Courts.

21) The Civil Revision Application is devoid of merits. It is accordingly **dismissed**.

22) After the order is pronounced, Mr. Sharma would pray for continuation of stay granted by the Appellate Court for a period of 8 weeks. The request is opposed by Mr. Shukla. It appears that the Appellate Bench had granted stay to the execution of the eviction decree by order dated 6

January 2024 subject to condition of deposit of interim compensation at the rate of Rs.20,000/- per month from the date of the decree i.e. 20 July 2023 till disposal of the Appeal. In pursuance of order dated 6 January 2024, the Revision Applicant apparently deposited the interim compensation for the period from 20 July 2023 to January 2024 (*Rs.1,40,000/-*) and for February 2024 (*Rs.20,000*). From March 2024, the Revision Applicant has admittedly failed to deposit the amount of interim compensation and the interim stay granted by the Appellate Court automatically came to an end. Thus, there is no stay in favour of the Revision Applicant since March 2024. I therefore do not find any valid reason to revive stay which expired in March 2024, that too after upholding the decree of the Appellate Court. Since the stay granted by the Appellate Court expired in March 2024, the request of Mr. Sharma for stay is accordingly rejected.

[SANDEEP V. MARNE, J.]

NEETA SHAILESH SAWANT

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