

Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.625 OF 2024

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VITTHAL
KUDHEKAR

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ARJUN VITTHAL
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Bipin Kantilal Joshi

...Applicant

Versus

Prakash Jivraj Jain

...Respondent

Ms. S. Q. Qureshi, for the Applicant.

Mr. Jash B. Vyas, for the Respondent.

Mr. Bipin Kantilal Joshi, Applicant, present.

Mr. Prakash Jivraj Jain, Respondent, present.

CORAM: MADHAV J. JAMDAR, J.

DATED: 17 FEBRUARY 2025

P.C.:

1. Heard Ms. Qureshi, learned Counsel for the Applicant and Mr. Vyas, learned Counsel for the Respondent.

2. By the present Civil Revision Application the challenge is to the legality and validity of the Judgment and Decree dated 17th October 2022 passed by the learned Judge, Small Causes Court at Mumbai in RAD Suit No.3 of 2009 as well as to the Judgment and Decree dated 12th September 2024 passed by the learned Appellate Bench of the Small Causes Court at Mumbai in R. Appeal No.149 of 2022. The Suit has been filed seeking declaration of tenancy of the Applicant i.e. Original Plaintiff. The said Suit has been dismissed and the Appeal challenging the same has also been dismissed by the impugned Orders.

3. Both the learned Counsel state that parties have arrived at the 'Consent Terms'. The Consent Terms are signed by the Applicant as well as the Respondent. The Consent Terms are also signed by the respective Advocates of the parties. Learned Advocates of the Applicant and the Respondent identify the signatures of the Applicant and the Respondent respectively. Accordingly, said Consent Terms are taken on record and marked "X" for identification. The Consent Terms read as under :-

"CONSENT TERMS"

1. ***Description of the suit premises:-*** Shop No.2, admeasuring about 306.25 sq. ft. in Vasant Niwas Building, Ground Floor, Building No.139 situated at Jai Prakash Road, Andheri (West), Mumbai – 400 058 (hereinafter referred to as ***"the suit premises"***). The Applicant and Respondent both are collectively hereinafter referred to as ***"the parties"***.
2. *The Suit Premises were let out to the Father of Respondent i.e. Jivraj Ganeshmal on tenancy basis for commercial purpose, the said Jivraj Ganeshmal was carrying on business from the suit premises. That after the death of Jivraj Ganeshmal, the Rent receipt of the suit premises was transferred in the name of Respondent. That since 1996 the rent receipt of the suit premises stands in the name of Respondent and he is carrying on business in the suit premises. The Respondent was regularly paying rent to the landlord and was smoothly carrying on business from the suit premises. The Landlord of the suit premises are (1) Arvind Jayawant Patil, (2) Surendra Jaywant Patil, (3) Milind Chandrakant Patil (hereinafter referred to as ***"the said Landlord"***).*
3. *The Applicant approached the Respondent on or about May, 1999 with an offer to start the business of Druggist and Chemist in partnership from the suit premises, the Respondent accepted the said offer of the Applicant and*

after which they started business in the name of “MESSERS SHEETAL AYURVED CENTRE” and for smooth functioning between the Parties, they both executed Partnership deed dated 01.06.1999. The Business of Partnership firm was duly registered with the Registrar of Partnership under the provisions of Partnership Act, 1932. The Parties opened Joint account with United Western Bank, in the name of said partnership firm. They also obtained Shops and Establishments License in the name of Partnership firm to carry on the said business of Druggist and Chemist. The Parties also obtained Sales Tax Registration Certificate and CST Number and as per the Rules and Regulation framed by the Government of Maharashtra, the Parties executed Guaranteed Bond. The said partnership firm was assessed with the Income Tax Authority under Income Tax Act, 1961. The Parties are partners of the said partnership firm and carrying on business from the suit premises. However since the Applicant was not giving the accounts of the Partnership firm to the Respondent dispute arose between the parties.

4. The Respondent is exclusively in possession of the suit premises since 1996 and after execution of the Partnership Deed the Applicant was also carrying on business from the portion of suit premises alongwith the Respondent and thus Applicant was never in exclusively possession of the suit premises. However since the dispute arose between the Parties in respect to the Partnership Deed, the apprehension of the Applicant was that the Respondent shall dispossess the Applicant and thus to remain in possession of the suit premises the Applicant filed Declaration suit on 5th January, 2009 in the Small Causes Court at Bandra bearing RAD Suit No.3 of 2009 claiming tenancy of the suit premises and also prayed for injunction so that the Respondent cannot dispossess the Applicant without following due process of law. The Hon'ble Small Causes Court at Bandra was pleased to grant injunction vide order dated 31st January, 2009 restraining the Applicant from disturbing the possession of the Applicant over the suit premises, till disposal of RAD Suit No.3 of 2009.
5. The Respondent thereafter filed its written statement to

RAD Suit No.3 of 2009 and after the issues were framed both parties led evidence and on 17th October, 2022 the suit filed by the Applicant was dismissed by the Hon'ble Small Causes Court at Bandra and thereafter the Applicant preferred R. Appeal No.149 of 2022 before the Hon'ble Small Causes Court at Bandra (Appellate Branch) against the judgment and order dated 17th October, 2022. That vide ex-parte injunction order dated 21st October, 2022, the Respondent were ordered not to disturb the peaceful possession of the Applicant till next date, which orders were continued on each and every date and finally on 12th September, 2024 the Appeal filed by the Applicant was dismissed.

6. That vide order dated 12th September, 2024 below Exhibit 27, the Hon'ble Court granted stay till the Appeal period. The Applicant thereafter preferred the present Civil Revision Application No.625 of 2024 against the order dated 12th September, 2024.

*7. **The Parties have decided to amicably put an end to the entire dispute and have confirmed the following terms:-***

*A. The Parties agree and confirm that the Partnership Deed dated 1st June, 1999 was executed between the parties and thereafter business was carried in the suit premises in the name and style of **"MESSERS SHEETAL AYURVED CENTRE"**. The tenant of the suit premises is Respondent i.e. **PRAKASH JIVRAJ JAIN** and Applicant shall never claim any rights of tenancy of whatsoever nature in the said suit premises. The Applicant had filed RAD Suit No.3 of 2009 since the Applicant was in fear that the Respondent will dispossess Applicant from the suit premises as the Respondent was also carrying on business from the suit premises. The Applicant is aware that the original landlord of the suit premises are (1) Arvind Jaywant Patil, (2) Surendra Jaywant Patil, (3) Milind Chandrakant Patil and thus without making them party to RAD Suit No.3 of 2009 the Applicant could not claim any tenancy from the Respondent and in fact the Respondent cannot declare the Applicant as tenant of the suit premises without the consent of the original landlord and thus the Applicant have agreed to not claim any rights in the suit premises on the basis of*

*tenancy or on the basis of Partnership and both the parties agree that the partnership deed dated 1st June, 1999 stands dissolved and both parties shall not claim or raise any dispute under the Partnership Deed dated 1st June, 1999. The Applicant was in occupation of certain portion of the suit premises on basis of the Partnership Deed. However on dissolution of the Partnership, the Applicant undertakes not to enter upon or use the suit premises on basis of the Partnership Deed and/or by claiming any tenancy rights in the suit premises. The Applicant admits that the suit premises were not sublet by the Respondent and on basis of the partnership Deed the Applicant was in occupation of the suit premises. That since the entire dispute is being resolved and thus the Respondent is making a payment of Rs. 6,00,000/- (Rupees Six Lakhs only) vide Pay Order bearing No.009368 dated 11-02-2025 drawn on Canara Bank, SSB Andheri West Branch, Mumbai - 400 058 in favor of the Applicant towards full and final settlement on the execution of the present Consent Terms, as and by way of full and final settlement of all the claims of the Applicant under the Partnership Deed and a copy thereof is annexed hereto and marked as **Exhibit A**. The Applicant confirms and admits the receipt of an amount of Rs.6,00,000/- (Rupees Six Lakhs only) in full and final settlement of all claims by and between the parties and no amount is due and/or payable by any party against the other. The Applicant confirms and admits having received the said payment. In view of the aforesaid payment, the Applicant confirms and admits that he has no outstanding claim whatsoever against the Respondent and/or in respect of the suit premises and/or in respect to the Partnership Deed.*

- B.** *Both Parties agree that Tenant of suit premises is the Respondent herein viz. Prakash Jivraj Jain and on the basis of Partnership the Applicant was in occupation of the suit premises. However henceforth the Applicant shall not enter the suit premises in whatsoever manner and thus both parties confirm that exclusively possession of the suit premises is with Respondent i.e. Prakash Jivraj Jain. The Applicant has removed all the articles, stock and other belongings of Applicant from*

the suit premises. Both the parties unconditionally withdraw all the allegations and shall not raise any dispute of whatsoever nature. The Respondent shall not be liable for any liability of whatsoever nature which shall arise from the Partnership Deed and thus in view of Full and Final settlement, Respondent shall not be held liable in whatsoever manner for any past and present liability of the partnership as also for any liability that may be discovered in future relating to the said business. The business that was carried out in the name and style of "MESSERS SHEETAL AYURVED CENTRE" has been closed down from the suit premises. However, only the Applicant will be entitled to the trade name of "MESSERS SHEETAL AYURVED CENTRE" and the Respondent shall not have any right in the said Trade name. The Respondent shall be free to carry on any business from the suit premises.

C. The Parties are also Defendants in RAE Suit No.270/548 of 2014 pending before the Hon'ble Small Causes Court at Bandra wherein the original Landlord of the suit premises i.e. (1) Arvind Jayawant Patil, (2) Surendra Jaywant Patil, (3) Milind Chandrakant Patil have filed suit for eviction against both the parties. Both the parties agree and confirm that one copy of this consent terms shall be filed before the Hon'ble Small Causes Court at Bandra in RAE Suit No.270/548 of 2014 as the suit premises was never let out by the Respondent to the Applicant for carrying on business. However the Applicant and Respondent have carried on the business as agreed in the partnership Deed and the Applicant had never been in exclusive possession of the suit premises. The Applicant had been in occupation of the suit premises on the basis of the Partnership Deed and the said suit premises was never sublet to the Applicant. However, the Applicant and Respondent have used the suit premises for commercial purpose only and have carried out business of the Partnership Deed and thus both the parties confirm whatever is stated herein and thus these consent terms shall be tendered before the Hon'ble Small Causes Court at Bandra in the pending litigation between the parties and the landlord.

D. The Applicant had also filed RAN Application No.8/SR

of 2013 before the Hon'ble Small Causes Court at Bandra against Respondent which is also disposed of vide order dated 21st December, 2018.

- E. The Applicant shall not use the address of the suit premises in future. Electricity bills are being issued in the name of the father of Respondent. Only one telephone connection stood in the name of Applicant, which has been disconnected on the application of Applicant. Any liability arising out of the said connections till date shall be solely of the Applicant.*
- F. The Applicant confirms that Applicant has not paid any rent towards the suit premises to the Respondent and the Respondent is liable to pay any and all rent, which is due and payable to the Landlord from the suit premises, which shall be entirely paid by Respondent. The Respondent is Tenant of the suit premises and thus even if the Respondent has called upon the Applicant to pay any amount, then the same is not towards Rent. Any amount which was paid by the Applicant to the Respondent was towards Partnership Deed and Respondent has not received any rent of the suit premises. The Applicant shall not have any liability towards payment of rent in respect of the suit premises.*
- G. Both the parties have understood that any claim of tenancy by the Applicant without the consent of the landlord is bad in law and is against the provisions of Maharashtra Rent Control Act, 1999 and Respondent also does not have any right to declare Applicant as tenant or claim any rent of the suit premises from the Applicant.*
- H. The present Civil Revision Application is disposed of in the above terms.*
- I. Parties to bear their own costs.”*

4. Accordingly, the Civil Revision Application is disposed of in terms of the Consent Terms.

[MADHAV J. JAMDAR, J.]