

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

CIVIL REVISION APPLICATION NO.42 OF 2023

M/s. Manilal and Son.,
Partnership Firm ... Applicant
Versus
Bombay Forgings Ltd.
(formerly known as Bombay Forging Pvt. Ltd.) ...Respondent

Dr. Birendra Saraf a/w Mr. Jay Sanklecha, Ms. Shweta Jaydev, Ms. Anuja Bhansali, Ms. Neha Sonawane, Mr. Shamant Sanya i/b. M/s. Rashmikant and Partners, for the Applicant.

Mr. Navroz Seervai, Senior Advocate a/w Mr. Vineet Naik, Senior Advocate a/w Ms. Hemlata Jain, Ms. Nupur Jalan, Mr. Sukand Kulkarni, Mr. Somanth Anchan, Mr. Raghav Gupta and Ms. Sanyukta Karne for the Respondent.

CORAM : MADHAV J. JAMDAR, J.

DATED : 24th JANUARY 2023

P.C. :

1. Heard Dr. Birendra Saraf, learned Senior Counsel appearing for the Applicant and Mr. Navroz Seervai, learned Senior Counsel appearing for the Respondent.

2. The Applicant filed Suit bearing T.E. & R Suit No.39/44 of 2002 seeking ejectment in respect of the suit premises i.e. the plot of land alongwith structures standing therein. It is the contention of the

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Applicant that the defendants have lost protection of the Maharashtra Rent Control Act, 1999 on the ground that the date on which the Maharashtra Rent Control Act, 1999 came into force i.e. on 31st March 2000, the share capital of the Respondent was Rs.1.20 Crores.

3. The learned Trial Court has come to the conclusion that the plaintiffs proved that the defendants have lost protection of the provisions of the Maharashtra Rent Control Act, 1999 and the lease has expired by efflux of time on 15th February 2002. The learned Trial Court further held that plaintiffs proved that the defendant has committed breaches of the terms and conditions of the lease. The learned Trial Court recorded the finding that the defendant has failed to prove that they are entitled to renew the lease for further period of 30 years and therefore, passed decree of eviction.

4. In the Appeal filed before the learned Appellate Court of the Court of Small Causes at Mumbai (Bandra Branch) being Appeal No.159 of 2007, it has been held that the defendant is entitled to the protection of the Maharashtra Rent Control Act, 1999 and therefore, the learned Trial Court had no jurisdiction to entertain and try the said suit. The learned Appellate Court also on merits held in favour

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of the Respondent. Thus, the learned Appellate Court reversed the decree passed by the learned Trial Court and dismissed the suits.

5. It is the main contention of Dr. Saraf that the reduction in the share capital of the Respondent from 1.20 Crores to Rs.80 Lakhs is sanctioned by the order of the Board for Industrial and Financial Reconstruction, New Delhi (B.I.F.R.) dated 11th November 2002. The said order records that the Bench has taken on record the MDRS submitted by the ICICI (M.A.) under section 18(4) of the Sick Industrial Companies (Special Provisions) Act, 1985 with immediate effect. The order further records that the sanctioned scheme is enclosed. It is the contention of Dr. Saraf that section 18(4) of the Sick Industrial Companies (Special Provisions) Act, 1985 provides that the scheme shall be sanctioned by the Board and shall come into force on such date, as the Board may specify in this behalf. Proviso to sub-section (4) of section 18 provides that different dates may be specified for different provisions of the scheme. The order dated 11th November 2002 of the Board states that the sanctioned scheme shall come into force with immediate effect i.e. 11th November 2002. If said date i.e. 11th November 2002 is taken into consideration then it is significant to note that the suit was filed on 27th March 2002 on

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which date the sanctioned paid-up equity share capital of the Respondent was Rs.1.20 Crores. If it is held that the scheme came into force w.e.f. 11th November 2002, then it is very clear that on the date of the filing of the suit, the Respondent has no protection of the Maharashtra Rent Control Act, 1999.

6. Mr. Seervai, learned Senior Counsel of the Respondent has relied on the judgment of the Supreme Court in **CARONA Ltd. Vs. Parvathy Swaminathan & Sons.**¹ Dr. Saraf, learned Senior Counsel also relied on the same judgment. In the said judgment, it has been held that the basic rule is that the rights of the parties should be determined on the basis of the date of the institution of the suit. Thus, if the plaintiff has no cause of action on the date of the filing of the suit, ordinarily, he will not be allowed to take advantage of the cause of action arising subsequent to the filing of the suit. Conversely, no relief will normally be denied to the plaintiff by reason of any subsequent event if at the date of the institution of the suit, he has a substantive right to claim such relief. It has been further held that the relevant date will be the date of the institution of the suit. Thus, if the date on which the scheme was sanctioned by the Board i.e. 11th

1. (2007) 8 SCC 559

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November 2002, is taken into account, as the date on which the reduction in share capital from Rs.1.20 Crores to Rs.80 Lakhs has taken place, then the suit filed on 27th March 2002 is within jurisdiction and maintainable u/s.41 of the Presidency Small Causes Court Act, 1882.

7. On the contrary, it is the submission of Mr. Seervai, learned Senior Counsel appearing on behalf of the Respondent that the sanctioned scheme specifies the cut-off date as 1st April 2001. Therefore, according to him, the reduction in share capital is w.e.f. 1st April 2001. However, admitted position on record shows that the date on which the suit was filed i.e. 27th March 2002, the share capital was 1.20 Crores. The same was reduced pursuant to the scheme which was sanctioned by the Board on 11th November 2002. It is also the contention of Mr. Seervai that the scheme was sanctioned on 8th March 2002 by B.I.F.R. as on that date certain directions were issued. However, perusal of said order dated 8th March 2002 of B.I.F.R. and the directions given in the said order shows that certain points were directed to be incorporated in the scheme, however no sanction was granted. Therefore, prima facie, it cannot be said that the date of sanction of the scheme was 8th March

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2002. In any case, there are various arguable questions raised.

8. It is also one of the contentions of Mr. Seervai that even if it is held that Small Causes Court has jurisdiction to deal with the case then also on all the points Appellate Court has held in favour of the Respondents and therefore, no interference in the Civil Revision Application is called for. It is the contention of Dr. Saraf that the findings recorded on other aspects by the learned Appellate Court are not in accordance with the evidence on record. He submits that the learned Trial Court has passed decree of eviction by considering the evidence on record.

9. Therefore, various arguable questions are raised in the Civil Revision Application requiring admission of the Civil Revision Application.

10. Therefore, Rule.

11. The learned Advocate for the Respondent waives service.

12. Till the next date, ad-interim relief in terms of prayer clauses (c) and (d).

13. Dr. Saraf, after taking instructions states that the Applicant will also not create any third party interest in the suit premises.

14. Mr. Seervai seeks time to file an affidavit-in-reply with respect

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to interim relief. Let such affidavit-in-reply be filed within a period of two weeks from today. Rejoinder, if any, be filed within one week thereafter.

15. Stand over to 17th February 2023.

[MADHAV J. JAMDAR, J.]