

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

CIVIL REVISION APPLICATION NO. 394 OF 2015

Sameer Dinkarrao Javalekar

Applicant

Vs

Gulab haribhau Ladkat, since
deceased, through their legal
heir (a) Deepali Gulab Ladkat
and Ors.

.. Respondents

Mr. S.M.Gorwadkar, Senior Advocate, i/b Ravi Girish Shinde,
Advocate for Applicant.

CORAM : R.G.KETKAR,J.
DATE : 31/07/2015

PC:

1. Heard Mr. S.M.Gorwadkar, learned senior counsel for the applicant.
2. By this application under section 115 of C.P.C., applicant, hereinafter referred to 'obstructionist', has challenged the Judgment and order dated 14.7.2015 passed by the learned District Judge-10, Pune below Exhibit 122 in Darkhast No.10 of 1993. By that order, the learned Judge dismissed the application moved by the obstructionist under section 47 of C.P.C. for dismissal of execution proceedings on the ground that the decree passed is a nullity and is not executable.
3. Perusal of the record indicates that initially predecessor-in-title of respondents no. 1 to 4 had instituted Suit No. 3137 of 1954 in the Small Causes Court, Pune for recovery of possession

on the ground of arrears of rent and subletting. The suit was instituted against respondent no.5-Pune Fuel Merchants Association Limited (for short, 'Company'). The suit was transferred to Civil Court and was renumbered Suit No.810 of 1955. The company went into liquidation and Liquidator was appointed. On 23.1.1956, the plaintiff and Liquidator entered into compromise. Under the compromise, the company agreed to pay arrears. The company thereafter committed default in paying arrears from 1.5.1956. The plaintiff gave notice dated 26.11.1956 (Exh.47) terminating the tenancy by the end of 31.12.1956.

4. It appears that liquidation proceedings were pending in the District Court, being I.C.Misc. Application No.7 of 1953. The plaintiff approached District Court for permission to institute suit against Liquidator in respect of the suit property. On 27.7.1962, the District Court granted permission. In pursuance thereof, the plaintiff instituted Suit No.1827 of 1963 in the Court of Small Causes, Pune for possession and arrears of rent, inter alia, contending that the company is in arrears from 1.5.1956. The suit was instituted under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, 'Act') on the premise that the property was governed by the Act. The suit was transferred to Civil Court and was renumbered as Suit No. 725 of 1964. On 16.8.1967, the learned 2nd Jt Civil Judge, Sr. Dn. Pune

held that civil court has no jurisdiction to entertain and try the suit. The Court held that the property that was let out by the plaintiff to the defendants, was not governed by the Act and it was at the time of the lease an agricultural land. The plaintiff received back the Plaint on 7.10.1968 and instituted suit in the District Court under section 446 of the Indian Companies Act, it is only the District Court which has jurisdiction to entertain and try the suits against the company in liquidation.

5. The company filed Written Statement Exh.15 and admitted that the property was an agricultural land and it was let out by the plaintiff on monthly rent of Rs. 112.50. In the suit, issue no.4 was framed as to whether provisions of the Act are applicable. In paragraph 8 the learned trial Judge observed thus:

“8. Issue No.4 does not survive, inasmuch as Shri Pashankar for the plaintiff as well as Shri Inamdar for the defendant have frankly stated that the provisions of the Bombay Rent Act are not applicable. It may be noted that such a decision has been given by the Second Joint Civil Judge, Sr Dn when he returned the plaint to the plaintiff for presentation to the proper Court. Thus, the defendant has secured an order on the basis of a contention that the suit property is not governed by the Rent Act and obviously the defendant cannot now urge that the Rent Act is applicable. Issue no.4 thus answered in the negative.”

6. Aggrieved by that decision, First Appeal No.726 of 1974 was preferred by the company in this Court. It was decided on 2/3.8.1982. In paragraph 11 it was observed thus :

“11. The last submission was that a concession on a point of law was made on behalf of the appellant-company in the trial Court and that the Bombay Rent Act did not apply to the suit

property. The suit property falls within the definition of the word “premises” as defined under section 5(8) of the Bombay Rent Act and the relevant date for ascertaining that was the date of letting as laid down in Mst. Subhadra Vs Narsaji Chenaji Marwadi, A.I.R. 1966 Supreme Court page 806 and relied on Vasudeo Dhanjibhai Modi Vs. Rajabhai Abdul Rehman and Ors, AIR 1970 Supreme Court 1475. Now, the second Jt. Civil Judge, Sr Dn., Poona recorded a finding on a preliminary issue that the property was an agricultural land and it was not 'premises” as defined by the Bombay Rent Act. Thus, before the Second Jt. Civil judge, Sr. Dn., also, an order was secured on the basis that the suit property was not governed by the Bombay Rent Act. It was after this decision that the plaint was returned. Again in the present suit, issue no. 4 about the applicability of the Bombay Rent Act was raised. A purshis Exh. 23, was filed whereunder this issue was not pressed. In these circumstances, Shri Gokhale's suggestion that the appellant-company should be allowed to raise the question of the applicability of the Bombay Rent Act cannot be accepted.”

7. Paragraph 11, extracted herein, shows that purshis Exh.23 was filed whereunder issue that the provisions of the Act do not apply to the suit property, was not pressed.

8. Mr. Gorwardkar submitted that perusal of the Judgment dated 14.8.1964 of the trial Court shows that though the suit property was an agricultural land, under the lease dated 1.6.1944 the company was permitted to erect sheds over the suit property for the purpose of storing coal in which company was dealing. In other words, the suit property was not used for agricultural purpose and, therefore, the provisions of the Act will not be applicable. He, therefor, submitted that the decree passed by the trial Court and confirmed by this Court is a nullity. In support of this submission, he relied upon following decisions:

(1) Isabella Johnson Vs. M.A. Susai, (1991) 1 Supreme Court Cases 494;

(2) Tavangowda Tamagowda Patil Vs. Yellappa Krishna Muchandi, (1980) 3 Supreme Court Cases 105;

(3) Yeshwant Kashinath Joshi Vs. Ranjana Pradi Mule, Civil Revision Application No.386 of 2012, decided on 3.12.2013 by this Court (Coram : R.G.Ketkar, J.).

9. Mr.Gowardkar submitted that the Act is not applicable to any land used for agricultural purposes. He submitted that the suit property was used for purposes other than agricultural purposes and, therefore, the Act is not applicable. The decree passed under the Act is a nullity.

10. In view of the submissions, issue notice to the respondents, returnable on 20/8/2015.

Parties are put to notice that subject to time constraint and the convenience of the Court, Petition will be disposed of finally at the stage of admission. Notice shall further indicate that despite service if the respondents fail to appear, Court will proceed to decide the petition on its own merits.

11. Before the next date of hearing, the petitioner will produce following documents:

(i) Copy of Complaint in Suit no.3137 of 1954;

(ii) Compromise dated 23.1.1956;

(iii) Notice dated 26.11.1956 Exhibit -47;

- (iv) I.C. Misc. Application No. 7 of 1953;
- (v) Order dated 27.7.1962 passed by the District Court giving permission to file suit;
- (vi) Copy of Plaint in Suit No.1827 of 1963;
- (vii) Order dated 16.8.1967 Exh.64 passed by the Civil Court,
- (viii) Copy of Written Statement at Exh.15;
- (ix) Copy of Purshis Exh.23 filed in the trial Court.

12. Mr. Gorwadkar states that Executing Court is proceeding on day to day basis. In view thereof, till next date there shall be ad-interim order in terms of prayer clause (c).

(R.G.KETKAR, J.)