

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 38 OF 2022

1. Pankaj Ramesh Chaudhari
age 36 years, occ. Hotel

2. Umesh Ramesh Chaudhari
age 30 years, occ. Hotel

Both R/o Mali Wada, Shirpur,
Tq. Shirpur, Dist. Dhule

Applicants

Versus

1. Rajan Purushottam Pantvaidya
Deceased through LRs

1-A Nikhil Rajan Pantvaidya
age 46 years, occ. Medical Practitioner
R/o Marwadi Lane, Shirpur
Dist. Dhule.

1-B Sachin Rajan Pantvaidya
age 40 years, occ. Service
R/o S-21, Gangathirth,
Near Araneyshwar Temple
Sahkar Nagar, Pune.

1-C Akshay Rajan Pantvaidya
age 39 years, occ. Service,
r/o Thane.

2. Smt. Minal Rajan Pantvaidya
age 69 years, occ. Nil.
r/o S-21 Gangathirth
Near Araneyshwar Temple
Sahkar Nagar, Pune.

Respondents

Mr. Ram B. Deshpande, Advocate for the appellants.

Mrs. R. S. Kulkarni, Advocate holding for Mrs. V. D. Patil Jadhav,
Advocate for respondents No. 1-A to 1-C.

CORAM : R. M. JOSHI, J.
RESERVED ON : 27th MARCH, 2023.
PRONOUNCED ON : 6th APRIL, 2023.

JUDGMENT :

1. This application is filed under Section 115 of the Code of Civil Procedure by the original defendants/tenants taking exception to the judgment and decree dated 4th January, 2022, passed in Regular Civil Appeal No. 112/2016 whereby the judgment and decree dated 29th July, 2016 passed by the Civil Judge Junior Division, Shirpur in Regular Civil Suit No. 47/2007 decreeing the suit for eviction of tenants under Section 16(g) of the Maharashtra Rent Control Act, 1999 (for short "the Act"), is confirmed.

2. Parties are referred to by their nomenclature in suit.

3. In short, facts of the present case can be narrated as under :-

Plaintiffs are Medical Practitioners practising at Shirpur for last 30 years. The suit premises is two storied building wherein

the first floor is used for residential purpose and the ground floor is occupied for the purpose of running a clinic which is essentially a maternity, surgical and nursing home. On the ground floor, three shops are situated out of which a medical shop is run by the son of the plaintiffs. Whereas in other two shops, two tenants are inducted including defendants. Originally, Ramesh, father of defendants, was tenant in respect of the shop admeasuring 12 x 9 sq ft. wherein he used to run Tea Stall in the name 'Sapna Tea Stall'. After demise of Ramesh, defendants, his sons, continued the said business. The suit premises was let out to the defendants on monthly rent and last rent payable was Rs.250/- per month. It is a case of plaintiffs that with change in the requirement of medical practice and for improvement in their services such as inclusion of sonography machine etc. they bonafide need the suit premises. It is further averred by the plaintiffs that their son Nikhil, after completing studies in medicine is into medical practice so also their daughter-in-law Supriya. According to plaintiffs, for the need of their son Nikhil and daughter-in-law Supriya, for separate clinical examination room, there is additional requirement of the premises by them. It is contended that for expansion of activities, plan was prepared and appropriate approvals from the Municipal Council were also obtained. It is also

claimed that by notice dated 17th March, 2017, the tenancy of the defendants was terminated and since they refused to handover possession of the suit premises, the suit came to be filed.

4. Defendants, by filing written statement, denied the contentions of plaintiffs however, it is not in dispute that the defendants are the tenants of the suit premises but it is claimed that rent is Rs. 200/- per month. These defendants have raised several issues such as maintainability of the suit for non-joinder of legal heirs of deceased Ramesh and also on the ground that there are sufficient premises available for the plaintiffs for expansion of medical profession. It is stated that plaintiffs have already started pathology laboratory in the shop abutting to the suit premises. It is also stated that except for the two shops, the entire building is in possession of plaintiffs which consists of ten rooms each on the first and second floor. According to defendants, only four persons reside in the said premises and hence there is more than sufficient space available for them and as such there is no requirement of the suit premises for them.

5. Learned Trial Court, after framing issues and according opportunity to the parties to lead evidence, decided the suit by passing judgment dated 29th July, 2016 decreed suit by holding that plaintiffs required suit premises reasonably and bonafide as contemplated under Section 16(g) of the Act. The said finding is confirmed by First Appellate Court in Regular Civil Appeal No. 112/2016.

6. Learned counsel for defendants/tenants submitted that plaintiffs have failed to prove bonafide requirement for eviction of defendants from the suit premises. According to him, the bonafide need of the landlord must continue till conclusion of the proceeding and in the instant case, after the death of plaintiff No. 1 and since plaintiff No. 2 has ceased to be in medical practice, said requirement no more exists and this aspect was completely ignored by both Courts. Grievance is also made that the Appellate Court has failed to give opportunity to lead oral evidence and to take into consideration the documents filed on record under Order XLI Rule 27 of the Code of Civil Procedure (for short "CPC"). According to him this has caused serious prejudice to the defendants and hence it is a fit case for remand to Appellate Court. It is further canvassed that both the Courts below have failed to consider the issue of hardship in proper

perspective. In order to support his arguments, reliance is placed on:-

1. Jainuddin Abdul Rehman Shaikh vs. Sitaram Damodar Varvadkar and others, 1981 Mh.L.J. 498. Bombay High Court (Landlord to satisfy element of necessity to evict tenant)
2. Sitaram Narayan Shinde and others vs. Ibrahim Ismail Rais and others, 2005(1) Mh.L.J. 35. Bombay High Court (Evidence must be sufficient about need in consonance of pleadings.)
3. Sara Rauf and another vs. Durgashankr Ganeshlal Shroff and others, 2007 (4) Bom.C.R. 812. Bombay High Court (On acquisition of other premises survival of need must be explained)
4. Badrinarayan Chunilal Bhutada vs. Govindram Ramgopal Mundada, AIR 2003 Supreme Court 2713. (on hardship)
5. Hashmat Rai and another vs. Raghunath Prasad, 1981 AIR 1711. Supreme Court (Subsequent events relevant for determination of bonafide requirement)

7. Learned counsel for the plaintiffs at the outset drew attention of the Court to Section 115 of the Code of Civil Procedure to submit that having regard to limited revisional jurisdiction, this Court cannot re-appreciate evidence on record like Appellate Court. By referring to the pleadings in the plaint and written statement,

coupled with evidence on record, it is submitted that plaintiffs have specifically pleaded their need and have led evidence to substantiate the same. It is further argued that the admissions of defendants and their witness are more than sufficient to show that the need of additional premises of the plaintiffs is bonafide. She made submissions regarding subsistence of need, hardship, failure of tenant to secure alternate premises etc. to butter up arguments, she placed reliance on :-

1. D. Sasi Kumar vs. Soundararajan, (2019) 9 Supreme Court Cases 282 (Scope of Revision/ bonafide requirement on date of institution of case subsist irrespective of delay in adjudication of case)
2. Babhutmal Raichand Oswal vs. Laxmibai R. Tarte and others MANU/SC/0504/1975 (In exercise of supervision jurisdiction correction of error not permissible)
3. V. Sumatiben Maganlal Manani (dead) by LRs vs. Uttamchand Kashiprasad Shah and another 2011(6) Mh.L.J. 1 (findings of fact not to be inferred in exercise of Revisional jurisdiction)
4. Parashram Tuljaram Belhekar vs. Tejmal @ Kankamal Mulchand Jain, 2007(2) Mh.L.J.610. (deemed status of tenant non-joinder/bonafide requirement is to be addressed on date of suit)
5. Raghunath G. Panhale (Dead) by Lrs. vs. M/s Chaganlal Sundarji and Co., AIR 1999 SC 3864. (Need or requirement

not equivalent to dire or absolute need)

6. Dattatraya Kamble vs. Abdul Rasul Moulali Kotkune
AIR 1999 SC 2226 (reasonable and bonafide requirement means really genuine requirement for any reasonable standards / even possession of know how for doing business is not a requirement.)
7. Anil Bajaj and others vs. Vinod Ahuja
MANU/SC/0435/2014. (Tenant cannot dictate landlord how to use his own property)
8. Madhukar Punjaram Sonawane and others
vs. Gajanan Vithal Khandekar, MANU/MH/0330/2009
(Landlord best judge of his requirement and Court cannot dictate)
9. Meenal Eknath Kshirsagar vs. Traders and Agencies and another, 1997(1) Mh.L.J. 121 (Landlord best judge of his requirement)
10. Rameshchandra Daulal Soni and others vs. Devichand Hiralal Gandhi, 2015(6) Mh.L.J. 309 (no proof of attempt to secure accommodation by plaintiff – issue of hardship in favour of landlord)

8. Section 34 of the Act provides for forum and remedies available to the parties litigating under the Act. Against the judgment and decree passed by the Trial Court, remedy of appeal is provided. However, there is no second appeal provided under the Act and as a result of which, unsuccessful party before the First

Appellate Court may prefer revision application challenging the said order. The law as to the powers of the Revision Court is well settled. Section 115 of the Code of Civil Procedure provides that High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies. And it may make order as it thinks fit if the subordinate Court has exceeded jurisdiction or failed to exercise the jurisdiction so vested. Of course, in case where exercise of jurisdiction is illegal or with material irregularity, it is open for this Court to cause interference in the order in question. However, it is not permissible to re-appreciate the evidence for the purpose of correcting errors of facts committed by Courts below. When no further appeal is provided against order of Appellate Court, it is not open to question propriety or reasonableness of conclusions drawn from evidence. What needs to be seen whether the Appellate Court has transgressed the limits of its authority [Babhutmal Raichand Oswal (supra)]. Keeping in mind jurisdiction under Section 115 of CPC, submissions of rival parties are considered.

9. In order to substantiate claim of bonafide requirement, the same must be at first instance pleaded and then proved with

cogent evidence. Pleadings of the plaintiffs indicate that plaintiffs specifically stated about their need for additional premises owing to changes in the requirement of the medical services. In this regard, apart from need of son and daughter-in-law, who are doctors, it is stated that introduction of sonography machine would be one of such requirements. There is pleading to the effect that for expansion, appropriate plans are prepared and permissions of Municipal Council are also obtained.

10. To substantiate this claim, plaintiff No. 2 Meena (Exhibit 29) was examined who deposed consistently with plaint and also referred to some subsequent events. In the cross examination, she admitted about pathological laboratory being established in the premises abutting to suit premises and a medical shop being owned by her son. She also accepted that on the third floor, there is construction of about 600 sq. ft. area. It was suggested to her that her two sons are residing at Pune and Thane and that she along with her son Nikhil, daughter-in-law Supriya, and grand son, is staying in the suit premises. Plaintiffs also examined Kishor (Exhibit 72) who claimed to have let out two rooms in his building to Nikhil and Supriya, son and daughter-in-law of plaintiffs on oral agreement

and also stated about taking back the possession thereof in June 2005. He admitted about there being no documentary evidence on record to support the said contention. He admitted about completion of construction of third floor on the suit building.

11. On the other hand, defendant No. 1, Pankaj, examined himself at Exhibit 78. He denied the case of plaintiffs and has claimed that the business conducted in the suit premises is only earning source of the family. In the cross examination, he has accepted that the plaintiffs have also filed suit against the second tenant in the suit building for recovery of possession of the premises from them. He also does not dispute the fact that son and daughter-in-law of plaintiffs are in actual practice of medicine. With regard to the properties held by defendants, it is admitted that the defendants are having residential plot, ancestral house and ancestral agricultural land. Availability of shops on rent in complexes at Shripur is not denied. This witness also went on to state that since he found the need of the plaintiffs to be bonafide, he started searching for the shops. Defendants also examined Gopal at Exhibit 103. This witness is having a stall on the road wherein he is conducting tailoring business. In the cross examination, he accepted

that in order to ensure that he does not antagonise the persons around, he has deposed.

12. Section 16(g) of the Act provides that the landlord is entitled to evict the tenant from the tenanted premises to secure possession thereof in case he requires the premises bonafide. Such requirement need not be dire or absolute need [Raghunath Panhale (supra)]. The requirement of the landlord must exist till the conclusion of the proceeding but delay in the adjudication of case cannot become ground to deny the relief. A balance needs to be struck in the facts and circumstances of each case. In this case, the defendants/tenants are seeking interference in the judgment passed by the Courts below on the ground that during the pendency of the suit, construction of third floor was completed and thereafter plaintiff No. 1 died. Similarly by relying upon the service of summons of appeal to plaintiff No. 2 on the address at Thane, it is contended that this plaintiff also no more stays in the suit premises nor is in active medical practice. In order to appreciate these submissions, one needs to consider the material evidence on record. No doubt, the summons is served on plaintiff No. 2 at the address at Thane, however, in the cross examination of plaintiff No. 2, it was specifically

suggested by defendants that she is staying in the suit premises along with her son Nikhil, daughter-in-law Supriya and a grand son. Gopal (Exhibit 103) witness of defendants, in his examination-in-chief states that plaintiff No. 2 intermittently stays with her sons who have settled at Pune and Thane. This evidence is more than sufficient to indicate that service of summons of the appeal on plaintiff No. 2 at the address at Thane is not proof that she is not staying in suit building or that she has ceased medical practice.

13. As far as construction of third floor on suit building during the pendency of suit is concerned, plaint clearly describes that only ground floor was for the purpose of hospital/clinic and other construction was meant for residential purpose. Needless to say that it is neither for tenant nor for court to state what would be residential premises needed by plaintiffs. The additional construction of third floor therefore would be inconsequential to decide issue of bonafide requirement of plaintiff. It is not the case of the defendants that there is any other place available for expansion of the hospital and services allied thereto. Merely because the residential premises is constructed, the need for expansion of business cannot eclipse. As regards death of plaintiff No. 1, since

the need spelt out is not individual centric but overall expansion of medical practice and hence it hardly makes any difference that plaintiff No. 1 is no more.

14. It is also argued that the Appellate Court though allowed application under Order XLI Rule 27 of the Code of Civil Procedure to produce documentary evidence, but defendants were not given opportunity to led oral evidence. In this regard, it would be material to consider the application filed by defendants before the Appellate Court. Perusal of said application (Exhibit 14) shows that the defendants have sought production of document to establish that Supriya, daughter-in-law of plaintiffs, is a full time lecturer in the college. The evidence which was sought to be led was in respect of this document only. The Appellate Court has not only permitted production of documents but the said documents were exhibited too and read in evidence. Appropriate findings are also recorded on the basis of said additional evidence. Here, it is not a case where the defendants were required to prove the documents and such opportunity is denied to them. Defendants in the light of application for additional evidence and prayers made therein, were not able to show any prejudice being caused by non leading of oral evidence in

that regard. Now, the only question falls for consideration is as to whether production of said document has materially affected outcome of the suit. The said document indicates that Supriya was full time lecturer in the educational institution. However, defendant No. 2 has given candid admission in cross examination that she is practising medicine. Infact, there was no dispute about the fact that she was a lecturer and as per the case of defendants, she was conducting pathological laboratory established in the adjoining premises. In view of these facts and the relevant evidence on record, there is no substance in the contention of the defendants that the Appellate Court has committed error in not permitting the defendants to adduce oral evidence, which infact was never sought.

15. With regard to the issue of hardship, it is sought to be argued that the plaintiffs are having number of premises at their disposal whereas the defendants are having only one shop wherein a Tea Stall is conducted which is the only source of income of the family which is falsified from admission of defendants about they having ancestral agricultural land. Apart from this, it is admitted that they are having residential plot and ancestral house at Shirpur. It is further admitted that there are shopping complexes and shops

are available on rent. It is thus clear that for the purpose of conducting business of tea vending in the area or around, sufficient premises are available on rent in the vicinity. As against this, the construction of the premises for residential purpose on the third floor of the building would not be of any help for the plaintiffs to expand the hospital and introduce additional services. It is not disputed that on ground floor except suit premises and premises of another tenant, there is no scope for the said expansion as sought to be done by plaintiffs. It is also material to note that the defendants in written statement have not pleaded that they have searched for the alternate premises and were not able to find the one. It is settled that there is obligation on the part of the defendant to plead and prove that he searched for the alternate premises and in absence thereof, the issue of hardship cannot be decided in his favour.

16. The entire material on record clearly indicates that both the Courts below have rightly taken into consideration the evidence on record and it is not a case of non-exercise of/or excessive exercise of the jurisdiction by these Courts. Moreover, there is also nothing to indicate that there was any illegality in exercise of jurisdiction or material irregularity in conduct of the trial and appeal or orders

impugned have led to the miscarriage of justice. Thus, this Court finds no propriety in causing interference in the impugned judgment and decrees. In the result, civil revision application stands dismissed.

17. Pending civil application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge

dyb

LATER ON :

1. After pronouncement of judgment, learned counsel for the applicants states that the stay to the impugned judgment and decree be continued for the period of twelve weeks in order to enable the applicants to move before the Hon'ble the Apex Court.

2. Learned counsel for the respondents opposes the said contention by stating that the stay way not granted on merits.

3. Extension of stay sought by twelve weeks is unreasonable in view of the fact that this time is not sought for the vacating of the premises. In considered view of this Court 4 weeks time is sufficient for the applicants to approach the Hon'ble Apex Court. Hence order dated 26th February, 2022 stands extended by four weeks.

(R. M. JOSHI)
Judge