

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 62 OF 2015

1. Govindlal Motilal Jhavar
(Deceased Through his L.Rs.
- 1A) Sushil Govindlal Jhavar,
Age 68 years, Occu. Business,
R/o. Gomukh Bungalow, Lane
No. 14, Parbhani Road, Pune.
2. Baldev Motilal Jhavar,
Age 77 years, Occu. Business,
R/o. Bhramhan Galli, At Post Bhingar,
Tq. & Dist. Ahmednagar.

**....Applicants
(Ori. Deft. 1 & 3)**

Versus

1. Kanakmal Maganmal Gandhi,
Age 76 years, Occu. Business,
R/o. Jain Galli, Ahmednagar.
2. Kisanlal Motilal Jhavar,
(Deceased through his L.Rs.
- 2A. Sanjay s/o. Kisanlal Jhavar,
Age 51 years, Occu. Business,
R/o. 266/1, Shrikrishna Apartment,
Shanivar Peth, Pune.
3. Sau. Vijaya Govardhandas Mohita,
Age 73 years, Occu. Household,
R/o. Lane No. 14, Prabhat Road, Pune.
4. Sau. Sunita Prakash Soni,
Age 70 years, Occu. Household,
R/o. Shriniketan Bungalow,
Ramdas Peth, Nagpur.
5. Sau. Shobha Narayandas Daga,
Age 71 years, Occu. Household,
R/o. Flat No. F-603, Ashok Gardan,
T.J. Road, Sewree, Mumbai - 400 015.

....Respondents.

Mr. R.N. Dhorde, Senior Counsel i/b. Mr. V.R. Dhorde, Advocate for applicants.

Mr. R.R. Mantri h/f. Mr. N.C. Garud, Advocate for respondents.

CORAM : T.V. NALAWADE, J.
DATED : 23rd July, 2015.

ORDER :

1. The proceeding is filed against judgment and order of Regular Civil Appeal Nos. 317/2011 and 329/2011 delivered by the learned Ad-hoc District Judge-3, Ahmednagar. The District Court has confirmed the judgment and decree of trial Court delivered in Regular Civil Suit No. 305/2002 and the suit was pending in the Court of Civil Judge, Junior Division, Ahmednagar. The suit was filed for eviction by present respondent No. 1 against the applicants, tenants on the ground of bonafide requirement for personal use and also on other grounds. The appellate Court has held that on the ground of bonafide requirement the landlord is entitled to the decree of possession. Both the sides are heard.

2. The suit property is described as C.T.S. No. 3576/1 which is described with local body as House No. 3649. It is a two storied building constructed on the plot of 49 x 16 fts. On the

eastern side of the suit property, there is Mahatma Gandhi Road, which is the main road of the city and the suit property has access from eastern side, from the main road. On the north side and south side of the suit property, there are shops and the property is situated in market place.

3. It is the case of plaintiff that one deceased Motilal Jhavar was inducted as tenant in the suit property and after his death, the defendants, the sons of Motilal, became tenants in the suit property. It is the case of plaintiff that he is entitled to get monthly rent of Rs. 45/- and permitted increases, but defendants are not ready to give monthly rent and permitted increases. It is the case of plaintiff that from November 1990, the rent and permitted increases were not paid and so he issued statutory notice to defendants on 31.1.2002. It is contended that in response to the notice, the defendants sent only rent amount in respect of the suit property, but they did not pay permitted increases and so, the plaintiff is entitled to get the relief of possession on the ground of default. It is contended that the defendants are liable not only to pay the rent, but they are liable to pay the house tax and education cess also.

4. It is the case of plaintiff that he is in need of suit

property for his personal use and he wants to do the business of clothes, ready-made garments on the ground floor and he wants to live in the portion of first floor. According to the plaintiff, he wants to use the suit property for himself and for his family members like sons. According to the plaintiff, he wants to make suitable changes in the building for the purpose of doing business and for residence purpose. It is contended that the property is situated on the main road of the city, which is a market place and plaintiff has no property of his own for residence and for doing business in Ahmednagar.

5. It is the case of plaintiff that his elder son Zumbarlal is living in Jain Galli of Ahmednagar, but that property is also not owned by the plaintiff or his son. The residential place of Zumbarlal is situated in narrow lane and it is not convenient. It is contended that Zumbarlal is doing business in a shop taken on rent basis in Dane Dabara area of Ahmednagar and this shop is also situated on narrow lane and it is not convenient for doing any business.

6. It is the case of plaintiff that his second son Vijay has no place for business in Ahemadnagar and plaintiff wants to make some place available to Vijay.

7. It is the case of plaintiff that greater hardship will be caused to him, to the members of his family, if the possession of the suit property is not given to him. He has contended that no hardship will be caused to the defendants if they are evicted as they have alternate accommodation. It is contended that the defendants own and possess many properties in Pune, which are situated on main road and which are suitable for business. It is contended that the defendants own and possess many properties on main road in Ahmednagar also and they have sold many such properties at big prices. It is contended that at Bhingar and on Mahatma Gandhi road itself defendants own and possess many properties which are suitable for their business.

8. It is the case of plaintiff that defendant Nos. 1 and 2 have shifted to Pune and they have settled there. It is contended that defendant No. 3 is using the suit property at present and due to nature of his business, agency business, the property is practically not in use and he is not making any income by running any business in the suit property. It is contended that even if the defendant No. 3 wants to do such business, he can do such business at any other place in Ahmednagar city as nature of the business permits it. It is contended that even the

residential place of defendants is very big and situated in market place of the city and he can run business in some part of that building also. It is contended that defendants own many shops, factories and businesses and so, no hardship will be caused to them if they are evicted from the suit property.

9. It is the case of plaintiff that the first floor of the suit premises is not in use for quite long time and it is kept in locked condition by the defendants and this circumstance also shows that defendants do not require the suit property. It is contended that only to harass the plaintiff, the defendants are not vacating the suit premises.

10. It is the case of plaintiff that statutory notice dated 31.1.2002 was given by him for termination of tenancy and it was terminated by 31.3.2002, but false reply is given by defendants and they have avoided to give possession of the suit premises.

11. The defendant No. 3 filed written statement at Exh. 25. Subsequently, defendant Nos. 1 and 2 also filed their written statements separately. It is the case of defendant No. 3 that the particulars of the amount due from defendants was not given in

the notice by landlord. It is contended that in the past, plaintiff avoided to accept the rent, when it was tendered by the defendant. It is contended that after receipt of the statutory notice of the amount of rent demanded by the plaintiff, rent was sent and paid. It is contended that the particulars of the permitted increases were not given in the statutory notice intentionally by the landlord and the particulars were asked by the defendant, but they were not given. It is contended that by doing such act, plaintiff malafidely attempted to brand the defendants as 'defaulters'.

12. Defendant No. 3 has contended that he requires the suit property for doing his business. He has contended that Vijay, son of plaintiff is doing business in Pune and he has settled there. It is contended that the plaintiff owns property at Dal Mandai in Ahmednagar, which is a shop and open space and plaintiff is doing business of grocery shop. It is contended that plaintiff is not having business of clothes and ready-made garments and he is making false contentions to take the possession of the suit property. It is the case of defendant No. 3 that plaintiff is in money lending business also and he does not require the suit property. It is contended that plaintiff owns agricultural lands and he gets income from agricultural lands

and other sources and he has many properties situated in village Mirigaon. Particulars of the said properties are given in the written statement.

13. It is the case of defendant No. 3 that Zumbarlal, son of the plaintiff is doing the business at Dande Dabra, which is a market place and that place is sufficient for his business.

14. It is the case of defendant No. 3 that plaintiff was asking to increase the rent, but when defendant refused to increase the rent, plaintiff took aforesaid steps and he filed false suit. It is contended that defendant No. 3 has no property for doing such business and hardship will be caused to him if he is evicted. It is contended that the business in the suit property is the only source of income to him. He has denied that he was having properties in Ahmednagar and he has sold many properties in Ahmednagar. It is contended that he cannot get similar property on the same road and he has earned goodwill of the business in the suit premises. He has admitted that he owns some open spaces, but said property is situated at long distance from S.T. stand and he cannot do business there.

15. It is the case of defendant No. 3 that the suit

premises is given to him for business purpose by his brothers and so, he is using the suit premises. It is his case that he is doing the business of agency of cigarette, greeting cards etc. It is his case that he is using both the floors of the building and greater hardship will be caused, if he is evicted from the suit premises.

16. Other defendants have filed similar written statement. They have also given some sale and purchase instances in respect of plaintiff. They have denied that defendants Nos. 1 and 2 are not doing the business in the suit property.

17. The issues were framed on the ground like 'defaulter' and 'bonafide requirement of the plaintiff for personal use'. There was issue of 'non user of suit property by the defendant' also. Both the sides gave evidence. The trial Court has answered all the three points in affirmative and the other relevant issues like issue of comparative hardship are decided against the defendants.

18. Before the trial Court, defendant No. 1 and defendant No. 3 gave evidence separately and they examined

different witnesses and this way, they together examined 24 witnesses when plaintiff had examined six witnesses. Both the sides produced voluminous documentary evidence to show that greater hardship will be caused to him. Defendants Nos. 1 to 3 separately filed appeals against the decision of the trial Court. The District Court has held that the landlord is entitled to relief of possession on the ground of bonafide requirement for personal use, but landlord has failed to prove the ground of default.

19. The evidence on the record shows that there was no dispute over the agreed monthly rent. In the statutory notice, particulars of permitted increases, education cess etc. were not given by the landlord. Admittedly, the rent amount of Rs. 6120/- was sent immediately by the tenant, defendant after receipt of the statutory notice and it was accepted by the landlord. In Exh. 102, the Statutory notice, the particulars of education cess were not given by the landlord and so, in the reply, the tenant had asked the landlord to give the particulars of this amount. Admittedly, the landlord did not supply these particulars and after filing of the suit, the tenant was required to file proceedings up to this Court. When this Court directed the landlord to give such particulars, the particulars were given and then the amount

of Rs. 15,000/- came to be deposited towards that claim by the tenant. On this point, there is no need of much discussion as the claim of the landlord with regard to the property tax or education cess needs to be specific and such amount needs to be demanded. The tenant is not expected to know as to how much tax is imposed by the local body as the demand notice is served on the owner, landlord by local body. Even in view of the provision of section 12 of Maharashtra Rent Control Act, such demand needs to be made by the landlord. Unless the demand is specific, giving necessary particulars, the landlord cannot say that the tenant has failed to make the payment of such amount and he has committed default. This ground was not argued from any other angle for the landlord. For the similar reasons, the District Court has held that the landlord has failed to prove the default ground. This Court sees no reason to interfere in the said decision given by the District Court by exercising revisional jurisdiction.

20. For getting the relief of possession under section 16 (1) (g) of Maharashtra Rent Control Act, the plaintiff has given particulars of his requirement in the pleadings. The plaintiff has also given the information about the present business of his son Zumbarlal and he has given information about the premises,

which are in possession of Zumbarlal. Substantive evidence is given that plaintiff and his family members (including Zumbarlal) require the suit premises for starting shop of clothes, ready-made garments and also for residence. They want to do the business on ground floor and they want to live on first floor by making necessary alterations in the building.

21. The evidence on the record is sufficient to prove that Zumbarlal is doing business in rented premises at present and said premises is not situated on Mahatma Gandhi Road, the main road of the city. The area of residential premises of Zumbarlal is small and it is also rented premises. If the area which is in possession of the plaintiff and his son Zumbarlal is compared with the area which is in possession of the defendant No. 3, it can be said that the defendant No. 3 is in possession of much much more area. Even if the contention of the defendant that plaintiff's other son has settled in Pune is accepted as it is, this cannot be change the fate of the matter.

22. The evidence on the record shows that from the defendants, only defendant No. 3 is living in Ahmednagar and other defendants do not require the suit property for their own use.

23. Much was argued by the learned Senior Counsel for the applicant, tenant in respect of some additional evidence which the tenant has tendered in appeal. It was submitted that the appellate Court has not touched this record and due to that, error is committed by the appellate Court in holding that greater hardship will not be caused to the tenant.

24. This Court has gone through the so called additional evidence tendered by the tenant in the appellate Court. It is in the form of copy of sale deed executed in favour of wife of Zumbarlal on 8.8.2011. This is in respect of a portion of one old dilapidated house property which is constructed in bricks and earth. The property having size of 66.9 Sq. Mtrs. is purchased and out of this portion, there is constructed portion of 46.40 Sq. Mtrs. This property is not situated on Mahatma Gandhi Road and it does not show that it is situated in any other market place. Other document is property card of C.T.S.No. 1310, but it could not be shown as to how the plaintiff or his son has concern with this property.

25. On the other hand, in the present proceeding, the learned counsel for respondent, landlord showed to this Court a

copy of sale deed executed in favour of Gadgil Jewellers for the consideration of Rs. 3.63 Crores on 27.2.2014. It is a four storied building and the size of the constructed property is 631 Sq. Mtrs. The building is constructed on 480 Sq. Mtrs. space. It was sold by Kamlesh, son of defendant No. 3 - Baldev. There is copy of another sale deed showing that property C.T.S. No. 3763 having constructed portion of 175.15 Sq. Mtrs. is purchased by Kamlesh and wife of Kamlesh for consideration of Rs. 38 lakh on 20.4.2015. Copy of Index II of third property Survey No. 267/2 situated at Malegaon, in corporation area of Ahmednagar having size of 157.5 Sq. Mtrs. shows that this property purchased by defendant No. 3's family for consideration of Rs. 4.9 lakh under the sale deed dated 21.10.2013.

26. The learned Senior Counsel for the tenant made submission that appellate Court ought to have considered aforesaid record which was produced in the appeal and this submission was made with a view to get the order of remand of the matter. The aforesaid record shows that the decision given by the appellate Court will not change as there is much more record against the tenant showing that he cannot prove that greater hardship will be caused to him.

27. The learned counsel for landlord submitted that the tenant has played delaying tactics in the trial Court and in the appellate Court and on flimsy grounds, various proceedings were filed to protract the things. Copy of Roznama of the proceeding filed in the trial Court is produced. Few such circumstances are quoted in Writ Petition No. 2911/2005 by this Court and order made by this Court is produced on the record. The conduct of the parties needs to be considered by the Court when the points like points involved in the present matter are required to be considered and decided. Instead of searching alternate accommodation for shifting the business, the tenant played delaying tactics and he tried to collect only the record against the landlord to show that he owns alternate accommodation. Separate written statements were filed by the defendants and separate witnesses were examined by them. One defendant did not appear and ex parte order was made against him. By using such circumstance, proceeding was filed for setting aside the ex parte order. In a case filed for possession by landlord on the ground of bonafide requirement, this circumstance cannot be ignored. By playing delaying tactics, the defendants continued to use the premises on meager rent and the landlord went on paying rent in respect of the premises taken by him on rent basis for his own business.

28. The learned counsel for respondent, landlord drew the attention of this Court to few pieces of evidence which are relevant for deciding the points involved in the present proceeding. They include the admissions given by the defendants in the evidence. The evidence shows that Kamlesh, son of Baldev and Baldev are doing business together. Thus, the aforesaid property was available not only for Kamlesh, but also to Baldev, but defendant No. 3 did not shift the business to his own property. The evidence shows that the suit property was in the use of only Baldev as other defendants had settled at other place, in Pune. The evidence on record shows that Baldev has house of the size 8341 Sq. Fts. The property is situated in Sarjepura, which is a part of Mahatma Gandhi Road. Similarly, the property, four storied building was sold by Kamlesh to Gadgil Jewellers for commercial use recently for the consideration shown as Rs. 3.63 Crores shown on record.

29. Though the trial Court and appellate Court have held that both the sides are businessmen and the financial conditions of the parties are almost similar, aforesaid record and circumstances show that defendants are more rich and they have more resources. Even if their conditions were similar, the

hardship will be equal/similar, the landlord becomes entitled to get the decree of eviction as in such cases point of comparative hardship needs to be decided against the tenant.

30. The evidence on the record is sufficient to prove that plaintiff has no other property on Mahatma Gandhi road, the main road of the city. There is no reason to disbelieve the case of plaintiff that he wants to open clothe, ready-made garments' shop in the suit property for himself and for his sons. There is no reason to disbelieve his case that he wants to live on the first floor of the building as there is no record to show that he owns any property for living and for doing business in Ahmednagar. The area of the suit property is around 600 Sq. Fts. as some portion is acquired by local body for road widening purpose. The evidence on the record is sufficient to show that Zumbarlal, son of plaintiff, is required to take premises on rent basis for residence and for business purpose. It cannot be said that he should make construction in aforesaid newly purchased small piece of property, a dilapidated old structure.

31. Defendants have not given convincing evidence to show that they had taken steps to search for alternate accommodation on Mahatma Gandhi road. Evasive answers are

given in cross examination by the defendants when some properties were pointed to them which are available in market place for doing their business. On the contrary, they sold their own building to a big jeweller having chain of shops. It is already observed that the defendants did nothing, but searched for other properties owned by the plaintiff during this entire period. In view of the facts and circumstances of the present case, this Court holds that it is not possible to interfere in the findings given by the trial Court and appellate Court on the aforesaid ground.

32. The learned counsel for petitioner placed reliance on the few reported cases. In the case reported as **AIR 2011 SUPREME COURT 559 [Malyalam Plantations Ltd. Vs. State of Kerala and Anr.]**, the Apex Court has laid down that it is the duty of the appellate Court to consider and decide the application filed under Order 41, Rule 27 of Civil Procedure Code before deciding the matter on merits. There cannot be dispute over this proposition. The application filed for additional evidence was allowed by the appellate Court and this Court has already made discussion that the said material was not relevant to the point involved. The property described in one sale deed which is in favour of daughter in law of plaintiff cannot be called

as suitable property for doing business which the plaintiff wants to start.

33. In the case reported as **(2009) 10 Supreme Court Cases 193 [Md. Ismail Vs. Dinkar Vinayakrao Dorlikar]**, the Apex Court has discussed the importance of subsequent developments which take place during pendency of the matter like present one. The proposition cannot be disputed. The Court is required to consider whether due to such subsequent developments, the requirements of the landlord stood satisfied. Similar observations are made in the cases reported as **(2009) 10 Supreme Court Cases 197 [Jai Prakash Gupta Vs. Riyaz Ahamad and Anr.]**, 2005 (1) ALL MR 556 Bombay High Court **[Solapur Taluka Khadi Gramodyog Utpadak Sahakari Society Vs. Dattatraya Shankarrao Kondewar and Ors.]**, AIR 1987 SUPREME COURT 741 **[Amarjit Singh Vs. Smt. Khaton Quamarain]** and **(1981) 3 Supreme Court Cases 103 [Hasmat Rai and Anr. Vs. Raghunath Prasad]**.

34. On the other hand, the learned counsel for landlord placed reliance on the case reported as **2013 (1) Mh.L.J. 28 [Chandiram Dariyanumal Ahuja Vs. Akola Zilla Shram**

Wahtuk Sahakari Sanstha, Akola]. This case is on the ground of default and facts of this reported case were altogether different.

35. The learned counsel for landlord placed reliance on some observations made by the Apex Court in the case reported as **AIR 2001 (SC) 803 [Gaya Prasad Vs. Pradeep Srivastava]**. The Apex Court has considered the helplessness of the landlord due to continuation of such litigation over years together. It is observed that due to such delay, landlord takes steps to satisfy his own needs and Court cannot expect him to sit idle. It is held that in such cases, unless subsequent events totally eclipse the bonafide need of the landlord, the landlord will not lose his right to get possession on this ground. In the case reported as **AIR 1997 (SC) 2399 [Kamleshwar Prasad Vs. Pradumanju Agrawal]**, the Apex Court has laid down that if the requirements of the landlord had continued till the decision of the appellate Court, the High Court is not expected to interfere in the matter in a proceeding filed under Articles 226 and 227 of Constitution of India if some event took place after the decision of the appellate Court. There cannot be any dispute over this proposition also. In any case, this Court has considered the subsequent developments as against the landlord. The

developments as against tenants could have also be considered. Necessary observations are made in this regard. In view of the aforesaid discussion, this Court holds that there is no possibility of interference in the decision given in favour of the landlord on the ground of bonafide requirement for personal use.

36. In the result, the revision stands dismissed.

37. Learned Senior Counsel for applicants seeks time for vacating the premises. Subject to giving undertaking that he will vacate the premises within two months, stay is granted to the execution of two months from the date of the decision.

[T.V. NALAWADE, J.]

ssc/