

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO.135 OF 2011

Shri Haridas Kumandas Ved,
Age-75 years, Occu:Business,
R/o-Visanji Nagar, Jalgaon,
Taluka Jalgaon, Dist. Jalgaon.

...APPLICANT

(Orig. Plaintiff - Land Lord)

VERSUS

Shri Trimbak Shamrao Jadhav,
Age-56 years, Occu:Laundary,
R/o-51 Visanji Nagar, Jalgaon,
Taluka and Dist. Jalgaon.

...RESPONDENT

(Orig. Defendant - Tenant)

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Shri B.R. Warma, Advocate for Applicant.
Shri A.I. Deshmukh, Advocate for Respondent

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CORAM: A.I.S. CHEEMA, J.

DATE OF RESERVING JUDGMENT : 8TH JANUARY, 2015.

DATE OF PRONOUNCING JUDGMENT: 22ND JANUARY, 2015.

JUDGMENT :

1. This Revision Application has been filed by Applicant Haridas Ved (original Plaintiff – landlord, hereafter referred as “Plaintiff”) against Respondent Trimbak Jadhav (original Defendant – tenant, hereafter referred as “Defendant”). The Revision has been filed against Judgment dated 22nd March 2011 in Civil Appeal No.37 of 2003 passed by District Judge-2, Jalgaon. By the impugned Judgment the Appellate Court set aside the Judgment and decree passed by the IInd Joint Civil Judge, Junior Division, Jalgaon in Regular Civil Suit No.129 of 1999 dated 4th January 2003 and dismissed the suit of the Plaintiff.

2. The Plaintiff had brought the Regular Civil Suit No.129 of 1999 on the grounds that: (1) Defendant was defaulter in payment of rent, (2) Plaintiff wants possession of the suit premises for bona fide requirement and (3) Non user of the

suit premises by the Defendant.

. The trial Court held the issue of non-user against the Plaintiff. The issues regarding Defendant being defaulter and bona fide requirement were held in favour of Plaintiff and thus the trial Court decreed the suit which was subsequently upset by the District Court.

3. The Revision Petition raises grounds that the Appellate Court had failed to consider legal provisions in entirety. The Appellate Court lost sight of Section 12(3)(b) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (57 of 1947) (hereafter referred as "Rent Act"). According to the Plaintiff as per provisions of Section 12(3)(b) of the Rent Act, Defendant should have been held as defaulter as was rightly found by the trial Court. The trial Court had rightly held in favour of the Plaintiff that the Plaintiff wanted to start cloth business for his son in the

suit premises which was shop and there was bona fide need of the family. The trial Court had held that the adjoining two shops were in possession of the Plaintiff in which his son and nephews were running ready-made cloth business and their personal need for suit shop to start new cloth business appeared to be bona fide. The findings were based on the evidence and pleadings but the Appellate Court contrary to the evidence, held that the suit shop being small, the need of the landlord could not be said to have been genuine. The finding of the trial Court regarding bona fide requirement and hardship was based on the evidence but the Appellate Court ignored legal and reasonable verdict of the trial Court and erroneous Judgment was passed.

4. I have heard learned counsel for both sides. Learned counsel for the Applicant- original Plaintiff submitted that there were arrears of rent from 1st April 1998 regarding which notice

Exhibit 35 dated 7th September 1998 had been issued. According to the counsel, the same was served on 11th September 1998. He submitted that Defendant sent money order dated 9th October 1998 vide Exhibit 68 and the trial Court held that there was compliance of Section 12(3)(a) of the Rent Act. However, the trial Court further considered that during pendency of the suit the rent had not been regularly deposited, as can be seen from Para 17 of the Judgment of the trial Court and thus the trial Court rightly concluded that Defendant was not regular in depositing the amount in Court and thus had persistently defaulted during pendency of the suit and the Court had no discretion but to hold him as a defaulter. Learned counsel for Applicant relied on the case of **Analini B. Shah Vs. Bapalal Mohanlal Shah**, reported in **A.I.R. 1980 Supreme Court Page 954**, the case of **Praveshchandra Ramprakash Sahani (Dr.) Vs. Abdul Ajij Dayabhai and others**, reported in **2002(2) Bom. C.R. Page No. 316** and the case of

Suman Shankar Unde Vs. Shamsunder Lekhraj Khatri, reported in 2005(6) Bom.C.R. Page 899 to claim that the Defendant was defaulter. According to the learned counsel, the first Appellate Court wrongly upset the Judgment.

5. In reply to this argument of the learned counsel for the Applicant – Plaintiff regarding default, learned counsel for the Respondent – original Defendant relied on the cases of **Kamlbai Baburao Kabade Vs. Smt. Laxmibai Janardhan Jagtap and others,** reported in 2001(2) Mh.L.J. Page 905, **Sugarbai Mohamad Siddiq and others Vs. Ramesh Sundar Hankare deceased by L.Rs.,** reported in 1997(2) Mh.L.J. Page 825 and **Nivritti Namdeo Thite Vs. Hemraj Gulabchand Daga,** reported in 2007(3) Mh.L.J. Page 846, to argue that it is admitted position that after the notice was sent, the Defendant had sent the amount deposited with municipal taxes etc. by money order which money

order was refused by the landlord and thus there was no cause of action to bring about the suit on the ground of default. Once such cause of action did not arise, the question of compliance of requirement to keep depositing the rent regularly in Court did not arise. Thus, according to him, the Appellate Court rightly found that Defendant was not defaulter.

6. As regards bona fide requirement, the learned counsel for the Applicant – Plaintiff argued that the Appellate Court considered the evidence of Plaintiff that he and his brothers comprise joint family and there were ten unemployed sons but still the Appellate Court held the question of bona fide requirement against the Plaintiff. It was argued that the evidence available was discussed in a cryptic manner and what was the other property available in the family was referred without considering the facts that the family was big and was doing business but

still required further premises looking to the number of family members. The learned counsel submitted that the reasonings of the trial Court were correct when the question of bona fide requirement was held in favour of the Plaintiff. The Plaintiff would suffer much more hardship compared to Defendant if the suit property was not made available to the Plaintiff – landlord. It has been argued that the landlord has to consider his requirement and the Court cannot force that the landlord should accommodate or adjust in whatever is available to the landlord.

7. Against this, the learned counsel for the Respondent – Defendant submitted that landlord had more than one shop and the observations of the Appellate Court with reference to Point Nos. 2 to 4 in the Appellate Court Judgment for holding against the landlord regarding bona fide requirement were correct and the Appellate Court Judgment needs to be maintained.

8. Coming to the question of the tenant being defaulter in payment of rent, the case of **Analini B. Shah** (Supra) relied on by the learned counsel for Applicant (although in para 3 of the Judgment only facts material for the question which was before the Hon'ble Supreme Court were set out) para 4 of the Judgment shows that there was dispute regarding fixation of standard rent. The Judgment of **Praveshchandra Ramprakash Sahani (Dr.)** (Supra) shows that in that matter also standard rent application had been filed. Similar is the case in the matter of **Suman Shankar Unde** (Supra) where miscellaneous application to fix standard rent was filed when dispute regarding arrears of rent came up. Facts of present matter are different. In present matter Suit was filed in 1999 when sub section (3) of section 12 (substituted in 1987) of the Bombay Rent Act was in force. Trial Court considered various payments made during pendency of the Suit to conclude that

the rent had not been deposited regularly in the Court and found that the Defendant-Tenant was defaulter. The Appellate Court wrongly referred to section 12(3)(a) and 12(3)(b) of the Bombay Rent Act which provisions were in existence before 1987. The Appellate Court, however, rightly observed that the trial Court had held that the Defendant-Tenant had tendered rent by money order to his land lord within stipulated period (after notice) and it was refused and even thereafter on the first date of hearing of the Suit, the Defendant-Tenant had deposited entire arrears of rent. The Appellate Court observed that in the circumstances the plaintiff-landlord had no cause of action to file the Suit. Although reference to section 12(3)(a) and 12(3)(b) of the Bombay Rent Act by the Appellate Court was wrong, still if the provisions as found in Section 12 of the Bombay Rent Act are perused, there is substance in the observations that when the arrears of rent had been sent within time after the notice and the

landlord had refused to receive the money order, there was no cause of action for filing the Suit on the ground of tenant to be defaulter.

9. At the time of arguments, learned counsel for both sides examined the money orders sent by the Respondent-Tenant from time to time of which, the coupons were available at Exhibit 66 to 68. In the record of the trial Court against Notice dated 7th September 1998 Respondent sent notice reply Exhibit 36 which mentioned that he had sent the rent for 1st April 1998 to June 1998 of Rs.45(Rs.10 towards rent and Rs.5 towards Municipal and other Taxes) on 18th July 1998 vide money order coupon No. 4657, which was refused. He had sent on 27th August 1998 rent for 1st April 1998 to 31st July 1998 of Rs.60 vide money order coupon No.606 and even that was refused. He had sent for the period 1st April 1998 to 31st August 1998 Rs.75 vide money order coupon No.989 on 21st September 1998 and even that was refused. The

tenant informed the landlord in his notice reply that on 30th September 1998, for 1st April 1998 to 31st December 1998 he had sent money order vide coupon No.1147 of Rs.135 and requested the landlord to accept the same. There is no dispute regarding the fact that even after filing of the Suit on the first date of hearing the rent outstanding with permitted increases was deposited.

10. Section 12(1) of the Bombay Rent Act read as under:

"12. No ejectment ordinarily to be made if tenant pays or is ready and willing to pay standard rent and permitted increases

(1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions

of the tenancy, in so far as they are consistent with the provisions of this Act.

(2) -----"

11. It is quite clear from reading of the above provision that the landlord cannot claim possession back so long as the tenant pays or is ready and willing to pay the amount of standard rent and permitted increases. When the Respondent-tenant had regularly sent money orders and even when the notice for arrears was sent, he had sent the amount by money order and the same was refused, there was no cause of action to file Suit on the ground that the Defendant-tenant was defaulter. The Defendant-tenant did not raise disputes about standard rent so as to attract Explanation (I) of Section 12 of Bombay Rent Act. When the facts show that, when the suit was brought, there was no cause of action to claim that the tenant is not ready and willing to pay the standard rent and permitted increases,

invoking of the other parts of Section 12 of Bombay Rent Act would not arise. In fact, even if Plaintiff is perused carefully, it does not spell out pleadings or prayer to give possession on ground of default.

12. For above reasons, I do not find any reason to interfere with the finding of the Appellate Court that decree on the ground of default could not have been passed.

13. As regards bona fide requirement, the trial Court considered the evidence that Plaintiff has five sons, his brother Narendra has two sons and his brother Gopal has three sons and that they form a joint family and for the sons who are unemployed, Plaintiff-landlord wanted to start business of cloths and so he required the possession of the suit shop to satisfy this bona fide need. Before trial Court Defendant claimed that Plaintiff had other premises at various

places and that Plaintiff and his brothers were separate in business. Trial Court considered the evidence of Plaintiff regarding his claim of bona fide requirement and the evidence of the Defendant which was in denial. It was argued before the trial Court that the Plaintiff admitted in cross-examination that suit premises is in part of area of plot City Survey No.30/3 of 7000 sq. ft. and major portion of the plot was vacant. Tenant claimed that landlord can construct shop in the open space to start business. Trial Court observed that there was no doubt that the Plaintiff admitted that major portion of the plot was open but the evidence showed that the portion of open space was being used by the Plaintiff-landlord for his business of coal and Defendant had not denied this fact. For such reasons, the argument raised by the Defendant-tenant was not accepted. Observations of the trial Court show that it found that the Plaintiff-landlord and his other family members were indulging in different businesses,

namely, grains, clothes and they had also an industry of Gram in M.I.D.C. and the entire family was in business. The trial Court observed that if entire family is in the business, aim of the Plaintiff to start business of cloth for his son in the suit shop could not be doubted. There were two shops adjacent to the suit shop in possession of the Plaintiff in which his son and nephew were running ready-made cloth business under the name "Naughty Looks" and when they were doing such business in the adjoining shops, their personal need to start new cloth business appeared to be bona fide, to the trial Court. Trial Court rejected the claim of Defendant-Tenant that there were vacant shops in occupation of the Plaintiff in area of his residence and business could be started there. Trial Court found that Plaintiff did not have vacant shop in his residential area and Court cannot dictate him regarding the bona fide need.

14. I have gone through the oral evidence available on record and find that the observations in this regard made by the trial Court were on the basis of the record.

15. The Appellate Court, however made sweeping observations to hold that the claim of the plaintiff-landlord was not bona fide. In para 10 of its Judgment, the Appellate Court referred to the fact that the plaintiff had admitted that City Survey No.30/3 was ad-measuring 7000 sq. ft. and that 20 ft. x 70 ft. of the premises was vacant land. There were houses and construction including three shops, out of which two shops were run by his sons, one was grocery shop and another was ready-made garment shop. The Appellate Court observed that plaintiff admitted that there were four tenants and he had received vacant possession from those tenants. However, the Appellate Court lost note of the fact that Plaintiff had also deposed that he had used the premises got vacated.

The Appellate Court did not refer to the evidence of the plaintiff where he had deposed that the open space near the suit shop was being used by him where for storage of coal in which he was doing business. The Appellate Court wrongly observed that near the suit premises Plaintiff had another premises where there were five rooms on the ground floor and five rooms on the first floor. If the evidence of Plaintiff (P.W.-1) is perused, in cross-examination what Plaintiff had deposed was that he resides at distance of fifteen minutes walk from the suit premises and there was structure of girls school which had five rooms on the ground floor and five rooms on first floor which were in his possession. The Defendant-tenant tried to suggest that near that premises there were shops, but the suggestions were not accepted. Plaintiff had denied that the place where he was residing was commercial area. Without appreciating the context in which reference was made to the five rooms on the ground floor and five rooms on

first floor, the Appellate Court simply referred to the admission that there were five rooms on the ground floor and five rooms on the first floor in occupation of the Plaintiff adding that the same was "nearby the said premises". In para 11 of the Judgment, without considering whole evidence the Appellate Court observed that the Plaintiff had open spaces and other several "shops" in his possession. Having rooms in structure which was being used as girls school near his residential premises appears to have been assumed by the Appellate Court to be "several shops".

16. The Appellate Court was last Court of facts and I would not have ordinarily looked into the details of the oral evidence, but as the Appellate Court had examined the evidence without making any observations as to how the trial Court erred on this count, I have examined the reasonings recorded by the trial Court as well as the reasonings recorded by the Appellate Court

keeping in view the oral evidence and I find that the observations of the Appellate Court with regard to bona fide requirement were quite casual and although it was the last Court of facts, while making observations, all relevant aspects were not kept in view or discussed. The Appellate Court could not have upset the findings on this count without finding as to how the trial Court was not right in this regard.

17. Even regarding comparative hardship, the trial Court discussed the evidence in para 27 of its Judgment and gave reasons as to why it was holding that the Plaintiff would suffer greater hardship and that the Defendant had not shown any evidence that he made any efforts to secure alternative accommodation but had failed. The Appellate Court, without any discussion, simply observed that question of hardship will be required to be answered in favour of tenant even though the Plaintiff had been successful in

proving bona fide requirements.

18. For above reasons, I find that the findings and reasons recorded by the trial Court with regard to Points Nos. 2 to 4, which had framed, cannot be maintained. The Appellate Court exercised its jurisdiction illegally while interfering with the sound reasons and findings recorded by the trial Court as regards bona fide requirement and hardship in favour of the Plaintiff-landlord.

19. For the above reasons, I pass following order:

O R D E R

(A) The Revision Application is allowed with costs.

(B) For reasons mentioned in the above Judgment, the Judgment and Order passed by

the District Judge-2, Jalgaon in Civil Appeal No.37 of 2003 is quashed and set aside. The said Appeal is dismissed with costs.

(C) Subject to findings recorded in this Judgment, the Decree and Order passed by IInd Joint Civil Judge, Junior Division, Jalgaon in Regular Civil Suit No.129 of 1999 is restored.

[A.I.S. CHEEMA, J.]