

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

Office Memoranda of appearance, directions and orders.	Notes, of Court's orders and Registrar's	Office Coram, orders or Registrar's	Court's or Judge's orders.
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CIVIL REVISION APPLICATION NO. 84 OF 2014

M/S. DEVICHAND SAVJIRAM AGRAWAL
VERSUS
SHAIKH SALLAUDDIN YAKUBSAB TAMBOLI AND ANOTHER

Advocate for Petitioners : Mr. Vijay B. Patiuo, Advocate
h/f Mr. Mahesh Patil.

Advocate for Respondent Nos.1 and 2: Mr. G. R. Syed.

CORAM: T. V. NALAWADE, J.
DATED: 10th August, 2015.

PER COURT:

1. The proceeding is filed to challenge the judgment and decree of Rent Suit No.1 of 2009 which was pending in the Court of Civil Judge, Junior Division, Latur and also against the judgment and order of Rent Appeal No.8 of 2011 which was pending in the Court of Principal District Judge, Latur. The suit filed by the present Respondent for eviction under the provisions of Maharashtra Rent Control Act (hereinafter referred to as the Act) is decided in his favour on the ground of bonafide requirement for

personal use. This decision is confirmed by the Appellate Court. Both the sides are heard.

2. The disputed property is a shop premises situated at Ganjgolai, Latur and it is a part of CTS No.9539. The size of the shop is 12'x11'. The plaintiff owns one more shop which is adjacent to the shop and which is in possession of the present applicant.

3. The suit was filed on as many as 4 grounds like willful default made in payment of the rent, the damage caused to the suit property, continuous non-user for more than 10 months preceding the date of the suit and the bonafide requirement of the landlord for expansion of the business. Plaintiffs Nos.1 and 2 are real brothers inter-se.

4. As the suit is decreed only on the ground of bonafide requirement, only the pleadings on that ground and the evidence on that ground is being discussed. It is the case of the plaintiffs that they want to expand their business and they have no other alternate accommodation for their business and so they want the possession of the suit premises for bonafide personal use, for the business. They have contended that the

defendant has acquired huge building and he is running business in the name and style as Ganesh Trading Company in the heart of city of Latur. It is contended that the defendant is a councilor of Municipal Council, Latur and he has given his shops on rent basis but is not ready to vacate the suit premises when the plaintiffs require the suit property for their own use. It is contended that no hardship will be caused to the tenant if he is evicted from the suit premises.

5. The defendant has denied that he has alternate premises for the shop and he has stopped using the suit premises and he is having one building in Latur and he has given his shops on rent basis. He has however admitted that he is a councilor of the local body. It is contended by defendant at present there is one shop premises in the possession of the plaintiffs, landlords and they own the property on the first floor also and so they can use some part of the first floor where they are residing for expansion of their business. He has contended that due to adamant behaviour of the plaintiffs he could not open the shop since 1st July, 2008. He has contended that some damage is caused to the

property but it is due to the fault of plaintiffs.

6. The issues were framed on aforesaid point which included the issue of hardship. Plaintiff No.1 gave evidence to substantiate the aforesaid contentions. His evidence shows that at present they are running a repairing shop which is also used for tin making. Copy of licence in that regard is produced. They want to expand this business. He has given evidence that defendant is doing the business in the name and style as Ganesh Trading Company in his own building and he has let out his shops and he is making income by giving his own premises on rent basis. Evidence is given that the defendant is councilor and is a rich person, and so no hardship will be caused to him. In the cross examination nothing could be brought contradictory to aforesaid version of plaintiffs. Plaintiffs have examined one Shaikh Chand Pasha, who has given similar evidence. His evidence shows that he is having a shop in that locality. A son of plaintiff No.2 is examined to show that they have no other source of income and many persons are depending for livelihood on the aforesaid business. One more witness like Maniyar is examined in support of the

same contentions.

7. On the other hand, the defendant has examined himself to give evidence in rebuttal. He has admitted that he has not opened the shop since 1st July, 2008 but he has blamed the plaintiffs for that and he has deposed that plaintiffs are not allowing him to run the business there. In any case, when the decree is not given on the ground of non-user there is no need to discuss the evidence on this ground more.

8. The evidence of the defendant in cross examination shows that he admits that he is councilor, he owns a four wheeler and his financial condition is sound. He has further admitted that he owns one building and in that building he runs one shop by name Ganesh Trading Company. He has avoided to admit that plaintiffs have no other premises and many persons are depending for livelihood on the business which they are running in the adjacent shop. He has avoided to admit that sons of plaintiff Nos.1 and 2 are required to do the business on footpath and the present premises is not sufficient for them. One witness Sunil, an engineer, is examined but he is on the ground of the case of damage caused to the

premises and so there is no need to discuss that evidence. One witness Shrikant Khatod, who is doing business in Lokhande Galli, is examined and there defendant is doing his business. His examination in chief itself shows that the sons of plaintiffs are required to do work at other places. He has admitted in his cross examination that there are at-least three shop premises in the building of the defendant.

9. On the basis of aforesaid evidence, issues with regard to the present ground, are decided in favour of the plaintiffs. There is clear cut admission by defendant that he is doing the business in other premises which is owned by him and there is evidence of his witness that he owns more shops in his own building. Financial condition of the defendant is also sound. No evidence at all is given on hardship by the defendant. These findings are the findings on facts and there is concurrent finding in favour of the landlord. No material irregularity or illegality in the decision given by both the Courts below is pointed out.

10. Reliance can be placed on the cases reported as **AIR 1973 (SC 76 [Managing Director (Mig)**

Hindustan Aeronautics Limited V/s Ajit Prasad);, AIR 1991 SC 1594 (Chandmal V/s Firm Ram Chandra and Vishwanath) and AIR 1998 SC 3325 (Patel Valmik Himatlal V/s Patel Mohanlal Muljibhai). Considering the scope of the Revision, this Court holds that it is not possible to interfere in the finding given by the Courts below. As no case is made out for interference, the proceeding stands dismissed.

[T. V. NALAWADE, J.]

Dt.10/08/2015
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