

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

...

34 CIVIL REVISION APPLICATION NO. 168 OF 2007

PARSHURAM TULJARAM BELHEKAR THR LRS MRS VATSALABAI
PARSHURAM BELHEKAR & ORS

VERSUS

MRS VATSALABAI SAHADU @ SADAVRAO DHONE & ORS

...

Advocate for Petitioner : V S Bedre

Advocate for Respondents R/1,2a,3 & 4: Mr. R R Karpe

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CORAM : S. V. GANGAPURWALA, J.

DATE : 29th September, 2015

PER COURT :

1. The present petitioners had filed suit for eviction on the ground of bonafide requirement, non user and default in payment of rent. The trial court rejected the suit. The petitioners filed an appeal before the District Court. The District Court dismissed the appeal. Aggrieved thereby, the present revision.

2. Mr.Bedre, the learned counsel for the petitioners strenuously contended that the Courts below failed to consider the concept of bonafide requirement in its correct perspective. Sole reliance is placed on the deposition of Kashinath in an another suit filed against the different tenant. Learned counsel submits that the said statement would not ipso facto be

relevant. The statement made in a particular circumstance will have to be considered. In the present case, the statement has been specifically made that the suit property is required for starting business for the son Kashinath.

3. The learned counsel submits that only because the statement was made by Kashinath in another suit that property in possession of present tenant is not suitable for stationery business, that would not be sufficient to negate the claim of the petitioners for bonafide requirement. Bonafide requirement is for the whole family. It is a small area i.e. 100 sq. feet. The other tenanted premises is also a small area. As such, both these premises would be required for running the business of stationery. The respondents has many properties. The question of hardship also has not been considered nor any issues is framed with regard to hardship by the lower appellate court.

4. Learned counsel further submits that as far as the ground of non user is concerned, the court has relied only on the statement of a shop inspector who has stated that the licence is renewed from 1991 to

1996. The suit is filed in 1994. The renewal of licence would not mean that premises is actually used. No independent evidence is led to that effect to show that the premises was actually being used during the relevant period. The appreciation of evidence is perverse. As such this Court can invoke its revisional jurisdiction.

5. Mr. Karpe, the learned counsel for the respondents supports the judgment and submits that there is no perversity in the appreciation of evidence. The evidence is properly appreciated. The bonafide requirement pleaded in the plaint is only for the business activity of son Kashinath and statement of Kashinath in another litigation has been rightly considered.

6. With the assistance of learned counsel, I have gone through the judgment.

7. This court, in revisional jurisdiction, would not re-appreciate the whole evidence. It would only consider the case if there is perverse appreciation of evidence or legal provisions have not been properly

appreciated. The Courts, while negating the claim of the petitioner for bonafide requirement, has considered the statement of Kashinath given in another eviction proceeding whereby eviction was sought of tenant Changediya. In the said eviction proceeding, Kashinath had given a statement and said that the premises which is in possession of the tenant in the present proceeding is not suitable for his stationery business and eviction of tenant Changedia was sought.

8. Mr. Bedre, the learned counsel fairly submits that subsequently the eviction proceedings have been allowed by this Court and the petitioners have got possession of the said property,.

9. In view of the aforesaid fact, it would not be possible to uphold the contention of Mr. Bedre, the learned counsel for the petitioners that the suit premises is required bonafidely for the business activity of son Kashinath. Perusal of the pleadings, it is manifest that possession of the suit premises on the ground of bonafide requirement is sought only for business activity of son Kashinath and have no other purpose.

10. Considering the above, evidence has been properly appreciated.

11. The admission given in the earlier proceeding is a substantive evidence *proprio vigore* as is held by the Apex Court in the case of **Tiru John Vs. Returning Officer**, reported in **AIR 1977 Supreme Court 1724**.

12. As far as the ground of non user is concerned, the defendant has led evidence to show that the business is carried out of lime. Even the licence is renewed for the relevant period. The business activity is being carried out. The courts below have appreciated the evidence in this regard.

13. As far as non consideration of hardship is concerned, the said issue does not arise. The aspect of hardship is required to be considered only if the plaintiff proves bonafide requirement.

14. In the light of above the civil revision application is dismissed. No costs.

(**S. V. GANGAPURWALA, J.**)

JPC