

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

CIVIL REVISION APPLICATION NO. 132 OF 2015

Gorjabai Mishrilal Bula Died through
L.Rs. Ushabai Ghanshyam Bula
and others .. Petitioners

Versus

Premchand Bhairulal Chopda
and others .. Respondents

Shri S. P. Shah, Advocate for Petitioners.
Shri Ajit Manohar Gholap, Advocate for the Respondent No. 1.
The Respondent Nos. 2 to 5 are Deleted.

**CORAM : S. V. GANGAPURWALA, J.
DATE : 25TH AUGUST, 2015.**

PER COURT :

. The present petitioner is a tenant. The respondents/landlord filed suit for eviction against the petitioner/tenant on the ground that the tenant has acquired suitable alternate accommodation and that the suit house is in dilapidated condition and requires immediate demolition. The Trial Court decreed the suit. Aggrieved thereby the tenant filed an appeal before the District Court. The District Court dismissed the appeal. The petitioner has assailed said concurrent findings in the present revision petition.

2. Mr. Shah, the learned counsel for the petitioner strenuously contends that, both the Courts below have considered the alternate accommodation acquired by the tenant, however, lost sight of the concept that the alternate accommodation should be a suitable alternate accommodation. Considering large number of members in the family of the defendant acquiring a small portion for residential purpose which would not accommodate all the members of the defendant's family, cannot be said to be a suitable alternate accommodation so as to entail eviction of the tenant on the ground that tenant has acquired alternate accommodation. The learned counsel relies on the judgment of the learned Single Judge of this Court in a case of **Prabhakar Raghunath Dixit Vs. B. S. Kothare** reported in **1974(76) Bom.L.R. 240**. According to the learned counsel the judgments of both the Courts below of granting eviction on the ground that tenant has acquired alternate accommodation are erroneous.

3. The learned counsel further submits that, the notice that was issued by the Municipal Council to the landlord was either to demolish or strengthen the building. Even permission for repairs is granted. In that case without resorting to the repairs of the building, the eviction on the ground that it is required to be demolished immediately cannot be put in service. According to the learned counsel when the Planning Authority had granted

permission for repairs, the Planning Authority had come to the conclusion that the premises is in repairable condition and is not required to be demolished. This aspect has not been considered by the Courts below while passing impugned orders.

4. Mr. Gholap, the learned counsel for respondents submits that, even during the pendency of suit the rest of the building has come to the ground except the two rooms. The tenant herself admitted in the evidence this aspect. This aspect also requires consideration. The learned counsel further submits that, the tenant did not bring it to the notice of the landlord or the Court that she has acquired alternate accommodation. No case was put forth by the tenant that the alternate accommodation is not suitable accommodation.

5. With the assistance of learned counsel I have considered the judgments delivered by both the Courts so also considered the submissions.

6. The jurisdiction of this Court exercising its revisional powers would be in a narrow compass. Both the Courts have concurrently passed decree of eviction on the ground of tenant acquiring suitable alternate accommodation. So also the premises being required for immediate demolition. In fact, the tenant had suppressed from the Court the fact that, tenant has

acquired alternate accommodation. It is only the plaintiffs by way of amendment in the plaint introduced this ground and this fact was brought to the notice of the Court. For proving that the alternate accommodation is not suitable alternate accommodation, the burden is upon the tenant. In the written statement, nor in the evidence the tenant has put forth the case that the alternate accommodation acquired by the tenant is not suitable alternate accommodation. In a case of **Prabhakar Raghunath Dixit Vs. B. S. Kothare** referred supra, this Court has observed that mere comparison of the area and feasibility of accommodation by itself may not be sufficient to decide, whether a particular accommodation is suitable or not. The evidence is required to be led by the tenant to plead and prove that the alternate accommodation is not suitable accommodation. The said burden is not discharged by the tenant. The fact that the tenant has acquired alternate accommodation is matter for record and is not a disputed fact. Considering the above, the decree of eviction passed by both the Courts on the ground of tenant acquiring suitable alternate accommodation needs no interference.

7. As far as the aspect of requiring the premises for immediate demolition is concerned, the notices are placed on record. Some events are said to have been brought before the Court about other structure having been demolished and only

these two rooms are remained, which are in occupation of the tenant. Both the Court on the said aspect have concurrently considered the issue.

8. The civil revision as such is dismissed. No costs.

[S. V. GANGAPURWALA, J.]

bsb/Aug. 15