

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

CIVIL REVISION APPLICATION NO. 207 OF 2015

Kisanlal Motilal Jhawar Died through
L.Rs. Sanjay Kisanlal Jhawar .. Petitioner

Versus

1. Kanakmal Maganmal Gandhi
and others .. Respondents

Shri Nitin V. Gaware, Advocate for the Petitioner.

Shri R. R. Mantri, Advocate h/f Shri R. R. Sancheti, Advocate for
the Respondent No. 1.

CORAM : S. V. GANGAPURWALA, J.

DATE : 06TH OCTOBER, 2015.

PER COURT :

. The present respondent No. 1 original plaintiff filed suit for eviction on two grounds (1) plaintiff requires the suit premises reasonably and bonafidely for his own occupation and for the occupation of his son and (2) the tenant has committed default in payment of rent. The Trial Court decreed the suit on both the grounds. Aggrieved thereby defendant Nos. 1 and 3 filed appeal bearing R. C. A. No. 317 of 2011 and defendant No. 2 filed appeal bearing R. C. A. No. 329 of 2011. The lower Appellate Court accepted the contention of the tenants to the extent that, tenants are not defaulters in payment of rent. However, confirmed the

decree of eviction on ground of bonafide requirement. The R.C.A. No. 317 of 2011 and R. C. A. No. 329 of 2011 have been decided by by the Appellate Court by common judgment dated 27.02.2015. The defendant Nos. 1 and 3 who had filed R. C. A. No. 317 of 2011 had assailed the judgment dated 27.02.2015 passed by the Appellate Court by filing C. R. A. No. 62 of 2015. This Court vide judgment and order dated 23rd July, 2015, dismissed the said revision. The said defendant Nos. 1 and 3 assail the said order of this Court passed in Civil Revision Application No. 62 of 2015 before the Apex Court. The Apex Court dismissed the special leave petition filed by defendant No. 1 and 3, inter alia, the judgments delivered by the Court below and this Court is confirmed up to the Apex Court.

2. The defendant No. 2 who had file R. C. A. No. 329 of 2011 against the judgment and decree of the Trial Court has filed the present revision against the very same common judgment delivered by the Appellate Court in R. C. A. 317 of 2011 and 329 of 2011 decided on 27.02.2015 and which is confirmed by this Court in C. R. A. No. 62 of 2015. So also the Apex Court in Special Leave to Appeal (C) No. (S) 26314 of 2015 vide order dated 18.09.2015.

3. Mr. Gaware, the learned counsel submits that, in the present revision the defendant No. 2 is raising additional grounds apart from the grounds raised in the said other revision

bearing C.R.A. No. 62 of 2015 by defendant Nos. 1 and 3. According to the learned counsel the Courts below have not properly construed the provisions of Section 16 (1) (g) and 16 (2) of the Maharashtra Rent Act (herein after referred as to the "Rent Act") in its correct perspective. The respondent No. 1/landlord has purchased the said premises in 1979, knowing well that, the same is tenanted premises. The defendants and there predecessor are tenant in the suit premises since the year 1950. After having purchased the suit property in the year 1979, the suit is filed by the plaintiff in the year 2002 for eviction. The learned counsel submits that, the suit is hit by non joinder of the necessary parties. The other sons and daughters of the original tenant are not arrayed as parties. On the said ground itself the suit ought to have been dismissed. The learned counsel further submits that, in appeal the present petitioner had filed an application U/O 41 Rule 27 of the Code of Civil Procedure for production of additional evidence. Though the said application is allowed, the Appellate Court failed to consider the evidence produced vide said application Exh. 34 i. e. copy of the registered sale deed executed in favour of the daughter in law of the plaintiff by virtue of which the business premises is acquired. In view of the acquisition of the business premises during the pendency of the proceedings the aspect of bonafide requirement of the plaintiff would stand diluted. In fact, it would stand negated. However, the said aspect has not been considered. It is

the duty of the Court to consider the additional evidence placed on record more particularly when the application for production of additional evidence is allowed. The learned counsel relies on the following judgments of the Apex Court and this Court to support his contention.

- i) North Eastern Railway Administration, Gorakhpur Vs. Bhagwan Das (D) by L.Rs. reported in (2008) 8 SCC 511.
- ii) Mohd. Ismail Vs. Dinkar Vinayakrao Dorlikar reported in (2009) 10 SCC 1993.
- iii) Ramesh Shriram Wani and others Vs. State of Maharashtra and others reported in 2012(3) Bom.C.R. 73.
- iv) Bismilla Bee Sk. Chand and another Vs. Mohd. Anwar Mohd. Akhtar reported in 2010(2) Bom.C.R. 63.
- v) Bhima Laxman Dhanvade through GPA Sanjay Bhima Dhanwade Vs. Rambhau Shankar Hargude Died through L.Rs. Rakhamabai Rambhau Hargude and others in Second Appeal No. 126 of 2011 judgment dated 23.07.2012.

4. The learned counsel further submits that, the aspect of comparative hardship has been totally ignored by the Courts below. No reasonings are given while holding the aspect of hardship in favour of landlord. In view of the acquisition of the

other property of the landlord, the aspect of hardship would undergone change and no hardship would be caused to the landlord if the eviction decree is refused. The learned counsel submits that, though the present petitioner is residing at Pune he still has his business interest in the business carried out in the suit premises. The same is borne out from the record itself. The learned counsel relies on the judgment of the learned Single Judge of this Court to substantiate his contention about consideration of comparative hardship in the case of **Bismilla Bee Sk. Chand and another Vs. Mohd. Anwar Mohd. Akhtar** reported in **2010(2) Bom.C.R. 63**.

5. Mr. Mantri, the learned counsel for the original plaintiff submits that, in fact the present revision is a grave abuse of process of Court and law. The present petitioner who is the defendant No. 2, had appeared in Civil Revision Application No. 62 of 2015 filed by defendant Nos. 1 and 3 against the same common judgment of the Appellate Court which is assailed in present revision. Though the present revision was sworn on 08th July, 2015, same was not filed till the Civil Revision Application No. 62 of 2015 was dismissed and on the dismissal of the said revision on 23rd July, 2015, the present revision is filed on 24th July, 2015. The R C. A. No. 317 of 2011 and R. C. A. No. 329 of 2011 were decided by the common judgment of the Appellate Court. The defendant No. 3 had filed the detailed written

statement. The defendant No. 1 had filed the pursis adopting the written statement of defendant No. 3. In the written statement of defendant No. 3, the defendant No. 3 has specifically contended that, it is the defendant No. 3 who is doing the business in the suit premises and defendant Nos. 1 and 2 are not doing any business in the suit premises. Even the defendant No. 2 who had filed the written statement accepted the contention of the written statement filed by defendant No. 3, more particularly in para 5 of the said written statement. Inter alia the defendant No. 2 has also accepted that, defendant No. 3 alone carries on the business in the suit premises. The C. R. A. No. 62 of 2015 is already dismissed by this Court and confirmed by the Apex Court. In light of that, present revision would be an abuse of the process of the Court which requires to be dismissed with exemplary costs. The learned counsel relies on the judgment of the Apex Court in the case of Ramrameshwari Devi and others Vs. Nirmala Devi and others reported in **2011 (6) Mh. L. J. 116**.

6. The learned counsel submits that, in C. R. A. No. 62 of 2015 this Court had considered the additional evidence. The same additional evidence which was filed by the present petitioner in R. C. A. No. 329 of 2011 was filed by defendant Nos. 1 and 3 in R. C. A. No. 317 of 2011. Both the appeals are decided by the common judgment, C. R. A. No. 62 of 2015 was filed by

defendant Nos. 1 and 3 against the said common judgment. This Court had considered the document produced by way of an additional evidence and had observed that, the same would not make any difference on the bonafide need of the landlord. The property which is acquired vide the said sale deed is by the daughter-in-law of the plaintiff and the same is also in dilapidated condition. The learned counsel further submits that, the defendant No. 2 resides at Pune, is not concerned with the suit property. As such even otherwise no hardship would be caused to the present petitioner and the said aspect of hardship is also considered by this Court while dismissing the C. R. A. No. 62 of 2015.

7. The learned counsel submits that, even this Court in earlier writ petition bearing Writ Petition No. 2911 of 2005 had observed that, the defendants are protracting the matter and had imposed cost of Rs. 10,000/- on Kishanlal.

8. I have considered the judgment delivered by both the Courts below, so also judgment delivered by the learned Single Judge of this Court in C. R. A. No. 62 of 2015.

9. The written statement filed by the defendant No. 3 clearly states that, it is the defendant No. 3 who is doing the business in the suit premises. The said averments by the defendant No. 3 in

his written statement are accepted by the defendant No. 2 in para 5 of written statement filed by him. The defendant No. 2 has put forth some additional ground in his written statement.

10. It is a matter of record that, R. C. A. No. 317 of 2011 filed by defendant Nos. 1 and 3 and R. C. A. No. 329 of 2011 filed by the present defendant No. 2 are decided by the Appellate Court vide common judgment dated 27.02.2015 and defendant Nos. 1 and 3 had filed C. R. A. No. 62 of 2015 in which the present petitioner had also appeared. The said revision is decided on 23rd July, 2015 and the present revision is filed on 24th July, 2015, with condonation of delay application. The same is circulated only after dismissal of the S. L. P. filed by defendant Nos. 1 and 3 against the order of this Court in C. R. A. No. 62 of 2015. The aforesaid facts are narrated to consider the conduct of the present petitioner.

11. As far as the merits of the contentions are concerned, the defendant No. 2 can not approbate and reprobate. In a reply to the notice which is given by defendant Nos. 1, 2 and 3 through the advocate, it was specifically accepted that the defendant No. 3 is carrying on his business in the suit premises. The defendant No. 3 in his written statement also maintained that, it is the defendant No. 3 who is carrying on business in the suit premises. The present defendant No. 2 in his written statement accepts the

averments made in the written statement filed by defendant No. 3. It has been observed by both the Courts that, defendant No. 2/present petitioner is residing at Pune. The proceedings have culminated against the defendant Nos. 1 and 3 up to the Apex Court.

12. Considering the aforesaid aspect of the matter, it would be difficult to hold that, the defendant No. 2 is carrying on the business in the suit premises. Be that as it may, even if the contention of the defendant no. 2 is accepted that, he has right in the business been carried out in the suit premises. Both the Courts have concurrently held that, the landlord requires the suit premises reasonably and bonafide for him and for his son who is doing business in the rented premises. The Courts have discussed the evidence on record and have observed that, Zumberlal the son of plaintiff is doing the business in the rented premises. The plaintiff does not own any other suit premises in his name. The premises acquired during the pendency of proceedings is by the daughter-in-law of the plaintiff. The learned Single Judge of this Court in C. R. A. No. 62 of 2015 has already observed that, suit premises purchased vide sale deed which is brought on record by way of additional evidence is in dilapidated condition. The said judgment is also confirmed by the Apex Court.

13. Considering the above, both the Courts having held that, the landlord requires the suit premises for his bonafide need and for the occupation of his son. No interference is called for in the said finding of fact. The Courts have observed that, after the suit has been filed, the defendants have not taken pains to secure any alternate premises. So also, it has been observed that, defendant No. 3 has sold some immovable property. Considering the aforesaid aspect, the concept of hardship has been rightly decided in favour of the landlord, more particularly when the son of landlord doing business in a rented premises.

14. As far as the issue of non joinder of necessary party is concerned, the Appellate Court has rightly considered that, the son of Motilal was carrying on business separately and the daughters who were married are residing at Bombay and as per Shop Act License (Exh. 84) the defendant Nos. 1 to 3 only are shown as tenants. It was held that, the legal heirs of Motilal are not necessary parties. The premise is a business premise.

15. The jurisdiction of this Court in revision would be in a narrow compass. The same can be exercised only if there is perversity in the appreciation of evidence. The evidence has been appreciated in a plausible manner.

16. In light of above, the civil revision petition is dismissed.

Considering the conduct of the petitioner as recorded above the same is dismissed with exemplary cost of Rs. 25,000/- (Rs. Twenty Five thousands only).

17. The learned counsel for the petitioner seeks stay to the extent of levy of costs. Considering the conduct recorded above the prayer for stay is rejected.

[S. V. GANGAPURWALA, J.]

bsb/Oct. 15