

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

CIVIL REVISION APPLICATION NO. 148 OF 2015

Abdul Salam S/o Abdul Sattar Afgan .. Petitioner

Versus

Gajanan S/o Madandas Vaishnav .. Respondent

Shri Hamzakhan I. Pathan, Advocate for Petitioner.

Shri D. R. Markad, Advocate h/f Shri Amol N. Kakade, Advocate
for the Respondent.

CORAM : S. V. GANGAPURWALA, J.

DATE : 02ND SEPTEMBER, 2015.

PER COURT :

. Mr. Pathan, the learned counsel for the petitioner submits that, the respondent/landlord filed suit for eviction on the ground of bonafide requirement. Initially the suit was decreed ex-parte in the sense the present petitioner/defendant could not cross-examine the plaintiff and also could not lead his evidence. In appeal filed by the present petitioner, the Appellate Court remanded the matter to the Trial Court giving opportunity to the petitioner to adduce evidence and to cross examine the plaintiff. Upon remand the petitioner cross examined the plaintiff, however, as short time was given of three months to dispose of the suit, present petitioner could not adduce evidence. The Court was also in haste to decide the said suit within three months. As

such, proper opportunity was not given to the petitioner to adduce evidence and the Court in absence of evidence of the defendant/petitioner decided the suit and granted decree of eviction on the ground of bonafide requirement. In an appeal filed by the present petitioner, the petitioner prayed for remand and to give opportunity to the petitioner to adduce the evidence, but the Appellate Court did not consider the said aspect. The learned counsel submits that, there are other co-owners also, who have not joined with the plaintiff to file suit for eviction, As such, the suit was not maintainable. The learned counsel further submits that, the aspect of hardship is also not considered by the Court as opportunity was not given to the petitioner to lead evidence. Said aspect of hardship could not be placed before the Court. The plaintiff owns other shop in the same city. The petitioner is doing his business of kids wear in the suit shop. The plaintiff is doing business of commission agent at old mondha. He can have other shops. According to the learned counsel, the evidence on record has not been properly evaluated. The learned counsel submits that, one opportunity be given to the petitioner to adduce evidence. The learned counsel further submits that, the petitioner has paid Rs.1,80,000/- as deposit to the landlord and it has also been observed in the earlier suit filed by the petitioner seeking injunction against the landlord from disturbing his possession.

2. I have also heard the learned counsel for the respondent.

3. The relationship between the parties is not disputed.

4. Much hue and cry is made by the petitioner of opportunity not being given. It requires to be considered that, initially present petitioner failed to cross-examine the plaintiff and to adduce his evidence. The suit came to be decreed. The petitioner filed an appeal. The appellate Court gave one opportunity to the petitioner. It set aside the decree passed by the Trial Court of eviction and remanded the matter to the Trial Court, giving opportunity to the petitioner to cross-examine the plaintiff and to adduce the evidence. Upon remand, the present petitioner cross-examined the plaintiff, however, did not adduce his evidence. The present petitioner gave adjournment applications to lead evidence below Exhibit 48, 49, 51 and 52 and thereafter vide Exhibit 53 passed pursis closing his evidence stating that, he does not want to lead further evidence. The said filling of pursis intimating the Court that, he does not want to lead any further evidence is voluntary act and that too was given after seeking adjournments on four dates. Thereafter the Court again decided the suit for the second time considering the evidence on record and passed decree of eviction. The petitioner filed appeal. The Appellate Court confirmed the finding of the Trial Court. It can not be said that, the petitioner has not been granted opportunity.

In fact the petitioner is guilty of protracting the matter considering, he is in possession of the property and enjoying the suit property. Once the Appellate Court remanded the matter giving opportunity to the petitioner. The petitioner even after remand filed four applications for adjournment and subsequently voluntarily passed a purnisi saying that, he does not want to lead evidence. The conduct of the petitioner turning around and asking for further opportunity would be abuse of process of Court.

5. The landlord is seeking possession on the ground of bonafide requirement. It has come in the evidence that, the landlord is running his business in tenanted premises. The shop which is let out to the present petitioner is in a commercial area. The plaintiff is doing the business of Commission Agency of Haldiram products. The aspect of hardship has been considered. An issue in this regard has been specifically framed. However, the petitioner deliberately choose not to enter into the witness box. Both the Courts on appreciation of the evidence has concurrently come to the conclusion that, the landlord requires the suit premises bonafide for his own use and landlord would suffer greater hardship, if, the decree of eviction is not passed. It is also considered that, the landlord is doing his business in tenanted premises.

6. Considering all the aforesaid aspects of the matter, no case for interference is made out. The civil revision application is rejected. No costs.

7. An amount of Rs. 25,000/- (Rs. Twenty Five Thousand only) deposited by the petitioner is allowed to be withdrawn by the petitioner.

8. At this stage, the learned counsel for the petitioner seeks continuation of interim relief. The learned counsel for the respondent opposes the said request. Considering the fact that, interim relief was in operation, the same is continued for further period of four (4) weeks from today. Needless to state on lapse of four weeks, the said protection shall come to an end.

[S. V. GANGAPURWALA, J.]