

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 138 OF 2014

Vasantlal Chandanmal Bhalghat
(Now died) Through LRs:

1A. Mr. Sushil Vasantlal Bhalghat,
Age : 49 Yrs, Occ : Business,

1B. Mr. Sunil Vasantlal Bhalghat,
Age : 45 Yrs, Occ: Business,

Both R/o. Behind Adat Bazaar,
Ahmednagar

1C. Mrs. Sujata Anil Gugale,
Age : 45 Yrs, Occ: Household,
R/o. Ganeshnagar, Erandawane,
Pune.

2. M/s. Sushilkumar Vasantlal & Co.,
A Partnership Firm, carrying-on
Business at Adat Bazaar,
Ahmednagar,
Through : Mr. Sushil Vasantlal Balghat,
Age : 49 Yrs, Occ: Business, ..PETITIONERS

VERSUS

1. Mr. Zumberlal Ghevarchand Bothra,
Age : 80 Yrs, Occ:Agri.,
R/o. Adat Bazar, Ahmednagar

FORMAL PARTIES

1. Mr. Rameshlal Chandanlal Bhalghat
(Now died) Throug Lrs:

1A. Smt. Kanchanbai Rameshlal Bhalghat
Age : 62 years, Occ: Business,

1B. Mr. Akshay Rameshlal Bhalghat
Age : 36 years, Occ: Business,

1C. Mrs. Reshma Sandip Bhandari,
Age : 26 years, Occ: Household,
R/o. Behind Market Yard,
Pune.

..RESPONDENTS

Mr. R.R. Mantri, Advocate holding for Mr. R.R. Sancheti,
Advocate for the petitioners

Mr. R.N. Dhorde, Senior Advocate, instructed by and with
Mr. R.L. Kute, Advocate for the respondent No. 1

CORAM : M.T. JOSHI, J.

RESERVED ON : 25TH JUNE, 2015

PRONOUNCED ON: 29TH JULY, 2015

JUDGEMENT :

1. Aggrieved by the grant of decree of eviction against the present petitioners in a rent case by the trial court, as affirmed by the District Court, the present revision application is preferred by the original defendants No. 1 and 3.

2. The present respondent no.1 claimed eviction on the ground of default in payment of rent, non-use of the suit premises without any sufficient cause by the

defendants No. 1 and 2 i.e. deceased Vasantlal and deceased Rameshlal since the year 1992 for a period of more than six months immediately preceding the filing of the suit and on the ground of unlawful subletting of the suit premises to defendant No. 3 Sushilkumar Vasantlal Bhalghat under the name and style as "M/s Sushilkumar Vasantlal and Company".

3. Said defendant No. 3 Sushilkumar is the son of original defendant No. 1 Vasantlal (since deceased) and it was alleged that defendants No. 1 and 2 — two brothers had unlawfully sublet the suit premises to defendant No. 3 Sushilkumar. As regards forfeiture of tenancy on the ground of willful default in payment of rent, the learned trial court has found that the suit was filed within 90 days of the issuance of notice and even the alleged arrears of rent were deposited in the court. Therefore, the relief against the forfeiture was granted and decree on that count was refused.

. As regards the non-user and subletting of the suit premises, the learned trial court accepted those pleas as well as need of bonafide occupation of the

plaintiff and granted the decree. Other defences of these defendants i.e. non-joinder of necessary parties, the suit being hit by the principle of res judicata or estoppel did not find favour with the learned trial court.

4. In the appeal before the District Court, the learned Adhoc District Judge No. 3 concurred with the learned trial court as regards the grounds of non-user and illegal subletting of the suit premises. He, however, did not concur with the trial court that the suit premises are required by the plaintiff for himself and his family members for bonafide occupation. Thus, the decree only on the ground of non-user and unlawful subletting of the suit premises was confirmed. Hence, the present revision by the original defendants.

5. Mr. R.N. Dhorde, learned senior counsel, instructed by Mr. R.L. Kute, learned counsel for respondent No. 1/landlord, submitted that not only the decree is required to be confirmed on the grounds as affirmed by the learned Adhoc District Judge but even on the ground of bonafide requirement of occupation of the

plaintiff and his family members. Therefore, the present revision is limited to these two issues coupled with the objections from the side of the petitioners, as detailed supra.

6. The admitted facts on record would show that the suit premises, a shop at Ahmednagar was originally let to Chandanmal Bhalghat, father of defendants No. 1 and 2 for a rent of Rs. 75/- per month. It was pleaded that after his death on 29th April, 1991, the defendants No. 1 and 2 are his legal legal representatives while only defendant No. 1 was carrying the business in the suit premises. The petitioners, however, contended that besides defendants No. 1 and 2, Chandanmal had also left behind him five daughters and therefore, those were necessary parties. Admittedly, deceased Chandanmal had a shop in the suit premises in partnership with the present defendant No.1, one Chandmal Rupchand Bora and one Shantilal Bhandari. Except defendant No.1, all others have died. Chandmal Bora and Shantilal Bhandari had no interest in the suit shop. According to the plaintiff, since the year 1992-1993, the operation of the firm was closed. Even the said firm had obtained

one plot in the market-yard. Even, upon closure of the business, the plot was also surrendered to the market-yard committee by defendant No.1. in the circumstances, since 1992-1993, the suit premises are not being used for a period of more than six months preceding the filing of the suit without any reasonable cause. Therefore, the decree was sought on this ground.

7. As regards the ground of subletting of the suit premises, it was pleaded that defendant No.3 i.e. the son of defendant No.1 is the unlawful sub-tenant in the suit premises of these two defendants. The defendant No. 3 has started his own shop under the name and style as "M/s Sushilkumar Vasantlal and Company" and therefore, the decree on that count is also sought.

8. As regards the need of reasonable and bonafide occupation of the suit shop, the plaintiff pleaded that the suit premises are required for himself, his son and grandsons for carrying the business. His son Narendra had died leaving behind his three sons. One of said three sons was Bachelor of Commerce and wanted to start the business. Another son could take education only

upto S.S.C. and he also wanted to carry the business. The plaintiff is having the experience of running shop and is having capital. His other sons have also become major and they carry business in partnership with each other. Therefore, the suit shop is required for the plaintiff as well as his family members. Earlier, he had filed a suit bearing Regular Civil Suit No. 421/1971 regarding the suit shop against Chandanmal on the ground of eviction for bonafide occupation. The same was dismissed as well as the Regular Civil Appeal No. 260/1973 was also dismissed in June, 1975. Thereafter, however, the circumstances have changed, as detailed supra and therefore, the decree was sought on that ground.

9. The defendants i.e. the present petitioners and proforma decreased respondent no.1 denied all the adverse allegations. They submitted that the suit is hit by the principle of resjudicata and estoppel. Necessary parties i.e. all the legal representatives of deceased Chandanmal, including five daughters are not arrayed as defendants in the suit. The plaintiff and his family members have number of commercial properties at

Ahmednagar as well as at Pune from which various business activities are carried. Therefore, by giving details of the same, the defendants pleaded that the suit be dismissed on that count.

. As regards the non-use of the suit shop and unlawful subletting thereof, it was submitted that the suit shop was never closed. In fact, defendant No. 3 i.e. the son of defendant No. 1 was helping deceased Chandanmal i.e. his grandfather in running the shop. Defendants No. 1 and 2 were also carrying the said business. Even the son of defendant No. 2, namely, Akshay upon death of his father is also jointly carrying the business in partnership with other defendants. In the circumstances, dismissal of the suit on this ground was also sought.

10. Before the learned trial court, voluminous documentary as well as oral evidence was placed.

11. Mr. R.R. Mantri, learned counsel holding for Mr. R.R. Sancheti, learned counsel for the petitioners, submitted as under :-

(I) That, the suit is bad for non-joinder of necessary parties i.e. five daughters of deceased Chandanmal. Further, learned trial court had made a confusion regarding the fact that deceased Chandanmal was operating the shop from the suit shop in partnership with two other persons and wrongly concluded that the firm was tenant and upon winding of the firm, the business in the shop is closed and there is non-user of the suit premises.

(II) As regards the unlawful subletting of the suit premises, Mr. Mantri submitted that the documents on record and more particularly the documents proved by the Sales Tax Officer and audited accounts would show that M/s Sushilkumar Vasantlal and Company, in fact, is a partnership firm, consisting of all the defendants and not a proprietary concern of Sushil, the son of defendant No. 1.

. Mr. Mantri further submitted that even the audit reports would show that the dividends were being disbursed between these partners. The learned trial

court as well as learned District Court, however, merely for the fact that partnership firm is not registered, wrongly found that the said firm is a proprietary concern of Sushilkumar and therefore, wrongly held that it is unlawfully sublet to him. He further points that the learned trial court wrongly, against the evidence, has remarked that during evidence, it was admitted by Sushilkumar that defendant No. 3 was his sole proprietary concern.

(III) As regards the appellate court's judgement, Mr. Mantri, submitted that the points for determination framed by it would themselves show that wrongly burden of proof was placed on the defendants by the learned Adhoc District Judge. Further, the purpose of the shop need not be the same type of business. It does not require that the same business should be continued in the shop. The learned District Court, however, has wrongly held that the defendants No. 1 and 2 are not using the suit property since long time for the purpose for which it was let out since 1982. He, therefore, submitted that the decree confirmed by the District Court on the ground of non-user of the suit premises by

defendants No. 1 and 2 and unlawful subletting of the same to the defendant No. 3 is wrong. The material irregularity is committed by the learned courts below and therefore, Mr. Mantri submitted that the revision application be allowed.

(IV) As regards the ground of need of the plaintiff and his family members for bonafide occupation of the suit shop, he took me through the evidence and findings of the learned trial court and submitted that the learned Judge of the trial court has rightly found that the need shown by the plaintiff is neither reasonable nor bonafide.

12. On the other hand, Mr. R.N. Dhorde, learned senior counsel instructed by Mr. R.L. Kute, learned counsel for the respondent No.1, has put forth his submissions as follows :-

(I) That, the deposition of defendant No. 3 would show that he was avoiding the queries regarding the partnership firm as to whether it was registered with the Registrar of Firms. The copies of the documents

brought from the office of the Sales Tax office would show that those were manipulated. On the other hand, the evidence collected by the plaintiff that two bank accounts of the defendant No. 3 firm were opened in the name of the sole proprietor i.e. the defendant No.3. Further, the licence issued under the Shops and Establishment Act obtained for running the shop is also in the name of defendant No. 3 solely. Thus, it is clearly proved that the suit premises were closed by the defendants No. 1 and 2 and thereafter, those were unlawfully sublet to defendant No. 3.

(II) On the issue of bonafide occupation of the suit premises, Mr. Dhorde submitted that the bonafide need only of the plaintiff/landlord is not required to be considered but even the need of the family members is to be considered. The landlord would be the best judge of his requirement and therefore, unless and until the need is shown to be malafide or unreasonable, the court is required to accept the said pleas. In the circumstances, Mr. Dhorde submitted that not only the revision application be dismissed but even the ground of eviction for bonafide and reasonable occupation of

the suit shop by the plaintiff be upheld.

13. On the basis of above material on record and the submissions advanced on behalf of both sides, the following points arise for my determination.

- (I) Whether the suit is hit for non-joinder of necessary parties ?
- (II) Whether the suit is hit by principle of res judicata ?
- (III) Whether the plaintiff needs the suit premises for bonafide and reasonable occupation of himself and his family members ?
- (IV) Whether the defendants No. 1 and 2 have closed the suit premises for a period of more than six months immediately preceding the filing of the suit without any reasonable cause ?
- (V) Whether the defendants No. 1 and 2 have unlawfully sublet the suit premises to defendant No. 3 ?

14. Upon hearing both sides, in my view, the suit is not hit either by non-joinder of necessary parties or by principle of resjudicata. While plaintiff failed to prove that the suit shop is needed by him for the bonafide and reasonable occupation of the same by himself and his family members, the ground of non-user of the suit premises by the defendants No. 1 and 2 for a period of more than six months immediately preceding the filing of the suit without any reasonable cause and of unlawful subletting of the same by the defendants No. 1 and 2 to the defendant No. 3 is proved. The revision application is, therefore, dismissed for the reasons to follow :

R E A S O N S

Non-joinder of necessary parties :

15. It was submitted that five daughters of deceased Chandanmal are not added as parties in the suit. It should be noted that upon death of

Chandanmal, all his legal representatives would be the joint tenants and not tenants in common. Further, as to whether the suit would be hit for non-joining the daughters of deceased Chandanmal would not be the issue in the present lis in view of the Explanation-VI to Section 11 of the Code of Civil Procedure. Therefore, the suit is not hit by non-joinder of necessary parties.

Applicability of the principle of res judicata

16. As regards the issue of applicability of the principle of resjudicata, though the earlier suit of the plaintiff for seeking eviction on the ground of bonafide and reasonable need of occupation was dismissed, now the plaintiff has come out with fresh and changed circumstances and therefore, the present suit would not be hit by the principle of resjudicata.

**Bonafide and reasonable need of
occupation of the suit premises :**

17. While there is no dispute regarding the principle that the need of the landlord of occupation

need not be the absolute need and the landlord would be the best judge of his need of occupation, he would have to show that the need shown by him is reasonable and bonafide. It also cannot be gainsaid that the need of occupation need not be solely of the landlord but the need of occupation of his family members is also a bonafide and reasonable need. Therefore, there is no need to repeat the ratio laid down in various authorities, relied on by Mr. R.N. Dhorde, learned counsel on this count.

. The question, however, is of the facts in the present case.

18. The learned trial court had noted the rival submissions of the parties, number of authorities relied on by them and without recording any finding of fact, has directly started discussion on the question as to whom, the greater hardship would be caused. The learned District Judge, therefore, rightly remarked that no findings were recorded by the learned trial court. Hence, the learned District Judge has taken into account the want of pleading as to what type of business the plaintiff or his family members wanted to carry from the

suit shop. The learned District Judge also took into account the admissions of the plaintiff in cross-examination which would show that all his four sons were carrying business separately, that he himself has constructed a commercial building in market-yard and further, not only his sons and grandsons, but even his daughters-in-law have licences to run various business in their name from different premises. All these family members were carrying the business of Commission Agent, Sale of Jaggery, Engineering work, Agency business. Further, it was admitted that the plaintiff owned the shop just in front of the suit property and various shop galas near the premises of Market Committee were in possession of his family during the relevant period. Not only this, the plaintiff has admitted that during the relevant period, he was raising construction of a building at market-yard and at one Chaurana. The learned District Judge, therefore, observed that the plaintiff's need of occupation is not reasonable or bonafide.

19. The findings are based on the facts and moreover on admissions of the plaintiff during cross-

examination. In the present revision, therefore, there is no need to interfere in the same.

**Non-user and unlawful subletting
of the suit premises :**

20. As argued by Mr. R.R. Mantri, learned counsel for the petitioners, the learned trial court was confused in holding that the partnership firm, consisting of deceased Chandanmal, was a tenant. It should be, however, borne in mind that similar arguments were advanced before the learned trial and the learned Judge appeared to have been confused by the same. The admitted fact is that deceased Chandanmal was the tenant and he had started business in partnership with two other persons. The tenancy was, however, continued of Chandanmal. The issue, therefore, is whether, upon death of Chandanmal and all other his partners, the suit premises were used for commercial activities i.e. a shop.

. According to the plaintiff, the partnership firm was closed immediately upon death of Chandanmal.

According to the defendants, however, Sushilkumar, the son of defendant No. 1 was looking after the business from the suit shop even during the lifetime of deceased Chandanmal and thereafter, the partnership firm consisting of the present defendants i.e. two brothers and defendant No.1's son - defendant No. 3 have started the business. Upon death of defendant No.2, his son Akshay was also accepted as a partner in the same. On the other hand, it is the case of the plaintiff that the defendants No.1 and 2 have illegally sublet the suit premises to Sushilkumar i.e. the proprietor of defendant No. 3 firm, namely, M/s Sushilkumar Vasantlal and Company.

. The issue, therefore, is as to whether M/s Sushilkumar Vasantlal and Company is a partnership firm consisting of defendants No. 1 and 2 alongwith Sushilkumar or as to whether it is a proprietary concern solely of Sushilkumar.

21. Of all the authorities relied on by both the sides before me, we have the ratio laid down in the case of **"Mohammedkasam Haji Gulambhai V. Bakerali Fatehali**

(Dead) by L.Rs.", reported in **AIR 1998 S.C. 3214 (1)**, relied on by Mr. R.N. Dhorde, learned senior counsel. The ratio would show that if the tenant carries on the business in partnership with his sons in the retred premises and thereafter, retires from the partnership, the premises continuing with the sons would amount to subletting. Mere fact that the tenant-father occasionally visits the shop was held to be of no consequence.

. On the other hand, Mr. Mantri relied on the ratio laid down in the case of **"Smt. Nirmal Kanta, deceased by L.Rs. Vs. Ashok Kumar and another"**, reported in **AIR 2008 S.C. 1768** wherein the evidence showed that the alleged sub-tenant was merely assisting the tenant in his cloth business and finding that the tenant had not parted with the exclusive possession of tenanted premises, on facts, it was held that the facts of sub-lease are not established and the alleged sub-tenant, at the best, can be said to be a licensee.

22. The oral evidence was led by both the sides on this issue. In the witness box, defendant No. 3

Sushilkumar has deposed that he was unable to tell as to upto what point of time, the shop was being operated by the earlier partnership firm of his grand father and other partners. As against the pleading that he was also looking after the business in the shop with his grandfather Chandanmal, he deposed that he did not know of the fact as to when the said partnership was closed as his grandfather was looking after the same. He showed ignorance as to when the present firm i.e. M/s Sushilkumar Vasantlal and Company was started and was unable to tell as to when the said business in the name of this firm was started upon closure of earlier firm, namely, Shantilal Chadimal and Company. He also pleaded ignorance as to whether the partnership of all the defendants in the name of M/s Sushilkumar Vasantlal and Company is registered with the Registrar of Firms or not. He further admitted that he had opened a cash credit account with Shahar Cooperative Bank individually in his own name. He, therefore, admitted the documents brought from the Bank in this regard at Exhibits-237 and 238. He showed ignorance as to whether similar account was opened in any other bank. Therefore, when the documents brought from ICICI Bank

were shown to him, he ultimately admitted that the said account is also operated by him in his sole name by using the seal of the firm M/s Sushilkumar Vasantlal and Company. Further, shop and establishment license also stood in his sole name.

23. As defendant No. 3 Sushilkumar showed his ignorance as to whether the firm M/s Sushilkumar Vasantlal and Company is registered with the Registrar of Firms, the plaintiff had brought on record the certificate to show that no such firm is registered with the Registrar of Firms.

. As against these facts, the defendants have examined Sales Tax officer Mr. Hanumant Ghorpade as PW7. The certified copies of the documents regarding the application form, etc. regarding opening of account, were already filed and he proved those documents at Exhibit-297 onwards. These documents showed that in the form, which was purportedly filed on 1st January, 1994, all the three defendants are shown as partners. A photocopy of the partnership-deed dated 01.04.1993 was also annexed to the said form.

. The witness, however, admitted during cross-

examination that as per the rule, it is required that the partnership firm should be registered with the Registrar of Firms. He further admitted that the documents and form do not bear any number of inward and even the purported application at Exh-296 made by the Firm to the sales-tax office was undated.

24. Taking into consideration all these facts, the learned trial court has doubted the genuineness of these documents, particularly in view of the fact that two bank accounts are being continuously operated by M/s Sushilkumar Vasantlal and Company as proprietor by name Sushilkumar and the licence obtained by him under the Shops and Establishment Act to run the shop is solely in his name. The learned District Judge has confirmed these findings.

. As the findings are based on the material and cannot be called as perverse for the above reasons, in my view, no material irregularity is committed by the learned trial court or the learned District Court in this regard. The findings will have to be, therefore, confirmed.

. The reliance of Mr. R.R. Mantri, learned

counsel for the petitioners, on the ratio laid down in the cases of "**C.R. Shaikh Vs. Lila Bai D. Rohida and another**", reported in **BCI (1981) 36** and "**Ashok Vithal Chavan and others Vs. Baburao Sakharam Bhagat**", reported in **2002 (6) Bom.C.R. 736**, is misplaced, as in those cases, the case of the landlord seeking eviction on the ground of non-user was negatived for want of sufficient pleading i.e. continuous non-user by the tenant without any reasonable case. Here in the present case, the plaintiff has pleaded these facts.

25. Mr. Mantri, learned counsel for the petitioners, points towards the wrong framing of points by the learned Adhoc District Judge indicating that the burden of proof was on the defendants. It appears that the points were framed on the line of grounds raised in the appeal memo. The reading of the findings, however, would show that the learned Adhoc District Judge has considered the pleadings and the evidence from both the sides and ultimately, recorded the findings. Once the parties led the evidence, the issue of burden of proof remains only of academic nature and the findings are required to be recorded on the basis of quality of the

evidence led by both the parties. This exercise is carried by the learned appellate Judge. In that view of the matter, though the mistake is committed by the learned Adhoc District Judge, in framing points for determination, it has not resulted into any material irregularity affecting the merit of the case.

. The ratio laid down by the Supreme Court of India in the case of "**Madhukar V. Sangram**" **reported in 2001 DGLS (Soft.) 675**, which underlines the principle that in first appeal, questions of law and facts both are required to be considered, is therefore, not applicable in the facts of the present case.

26. Mr. Mantri, learned counsel further submitted that merely because a party states that the subletting of suit premises is unlawful, it would not become unlawful. The plaintiff is required to show that the subletting is unlawful one.

27. However, there is no pleading that the landlord has permitted subletting of the suit premises. In the circumstances, the issue is merely of academic nature.

28. In view of the above discussion, there is no

merit in this revision application. The revision application fails. Hence, the following order :-

29. The civil revision application is hereby dismissed with costs.

Sd/-
[M.T. JOSHI]
JUDGE

30. After pronouncement of the judgment, Mr. R.R. Sancheti, learned counsel appearing for the petitioners, submits that the effect and operation of the above order as well as the execution of the decree be stayed for a period of eight weeks. Learned counsel for respondent No. 1 opposes the request.

31. In the circumstances, the execution of the decree as well as the effect and operation of the present order is hereby stayed till 5th October, 2015.

Sd/-
[M.T. JOSHI]
JUDGE