

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 255 OF 2015

Shaikh Siraj Shaikh Nizam Musalman
Died through his legal heirs

1A) Shabnurbi Shaikh Siraj and Ors.**Applicants.**
(Ori. Defendants)

Versus

Saiyyad Mustafa Saiyyad Lal**Respondent.**
(Ori. Plaintiff)

Mr. P.B. Pawar, Advocate for appellants.

Mr. A.S. Abhyankar h/f. Mr. S.V. Natu, Advocate for respondent.

CORAM : T.V. NALAWADE, J.
DATED : 8th December, 2015.

ORDER :

1. The revision is filed by tenant to challenge the judgment and decree of Regular Civil Suit No. 64/2007, which was pending in the Court of Civil Judge, Senior Division, Nandurbar and also to challenge the judgment and order of Regular Civil Appeal No. 36/2014, which was pending in District Court, Nandurbar. The suit filed by present respondent for eviction under the provisions of Maharashtra Rent Control Act on the ground of bonafide requirement for personal use is decreed by the Trial Court and the finding is confirmed by the Appellate Court. Both the sides are heard.

2. It is the case of landlord that he is the owner of property bearing C.T.S.No. 2362/B situated at Nandurbar city and it is in possession of tenant. The area of property is around 1600 Sq. Fts. In a proceeding filed by tenant, the standard rent of this premises is fixed as Rs. 8/- per month.

3. It is the case of landlord that plaintiff has only three rooms for his use where he is living with his son, daughter in law and three grand daughters and this property is not sufficient for the residential purpose. It is contended that his son wants to live separate from him and so, the suit property is required for personal use and it is bonafide requirement. He contended that the defendant owns other properties and his sons are living separate from him and he can get alternate accommodation and no hardship will be caused to the tenant, if the decree of eviction is given. It is contended that greater hardship will be caused to the landlord, if the decree is not given and tenant is not vacating the premises due to the circumstance that he is required to pay Rs.8/- per month only as rent of such big house. Other contentions with regard to some permanent construction made by tenant were also made, but there is no need to discuss the said material as decree is confirmed only on one ground.

4. The tenant contested the matter by filing written statement. He tried to even contend that the suit is not properly represented as other legal heirs of the landlord are not on the record. He denied that the plaintiff is in need of suit premises for personal use and his need is bonafide. He denied that the son of plaintiff wants to live separate from the plaintiff. He denied that he has made construction of permanent nature in the suit premises. He denied that his sons are living separate. He contended that some repairs which were necessary for the use of premises like changing of tin sheets were made, but that has not caused damage to the suit property.

5. The defendant contended that some property situated near the suit premises was sold by the plaintiff and one more property is purchased by him which is situated in front of the suit property. It is contended that the son of plaintiff is running a tea stall and pan stall in the said premises and some portion is given on rent basis. He also contended that the plaintiff has constructed new building on his property bearing C.T.S. No. 2354/B-2 and in the house, there are atleast six rooms and that space is sufficient for his family. He contended that the plaintiff is in possession of more area than the area which is in possession of defendant and greater hardship will be caused to

the defendant if the decree is given against him. Defendant contended that he has no source of income and hardship will be caused to him, if he is evicted and he will not be able to get other premises in the same locality.

6. Both the sides gave evidence in the Trial Court. The Trial Court considered the circumstance like plaintiff, his son, daughter in law and his three grand daughters are living in the premises which is in his possession. The plaintiff has given evidence that he has dispute with his son and son wants to live separate from him and so suit premises is required for the use of family members. Son of plaintiff is examined and his evidence is consistent with the aforesaid contentions. In the cross examination, Shabnurbi, witness for defendant has admitted that plaintiff is in possession of only two rooms and at present, in one room a sister of plaintiff is living.

7. The Trial Court has considered the circumstance that two sons of original defendant, tenant have shifted to other place as they are married and one son has shifted to other State like Gujrat. Defendant has not given evidence that he made any attempt to find out other place. All the circumstances are considered by the trial Court for giving decree of eviction on the ground of bonafide requirement for personal use.

8. The learned counsel for petitioners submitted that in the appeal, it was brought on the record that the plaintiff has made some construction over another property situated in front of suit property and some additional property is available with him. It appears that attempt was made for adducing additional evidence by producing some record and by making a request to the Appellate Court to appoint Court Commissioner. This application is considered by the Appellate Court along with appeal. In the suit itself this property was mentioned in written statement by the tenant and so, it cannot be said that this circumstance was not considered by the Trial Court. In view of these circumstances, the Appellate Court has held that there is no need to consider the documents produced and to appoint the Court Commissioner.

9. The learned counsel for petitioners placed reliance on one case reported as **AIR 1992 SUPREME COURT 700 [Ramesh Kumar Vs. Kesho Ram]**. He submitted that the subsequent events need to be taken in to consideration by the appellate Court and it needs to be ascertained that the landlord still needs the suit properties for personal use and this requirement is bonafide. On this point, there is one case of this Court reported as **[2015] 0 Supreme (Mah) 1114 [Govindlal**

Motilal Jhavar and Ors. Vs. Kanakmal Maganmal Gandhi and Ors.]. This Court has considered the ratio laid down in the case reported as **AIR 2001 (SC) 803 [Gaya Prasad Vs. Pradeep Srivastava]**. In the reported case, this Court has considered the relevant portion of the observation made by the Apex Court in the case of **Gaya Prasad** cited supra and the portion is at para 35, which is as under :-

"35. The learned counsel for landlord placed reliance on some observations made by the Apex Court in the case reported as **AIR 2001 (SC) 803 [Gaya Prasad Vs. Pradeep Srivastava]**. The Apex Court has considered the helplessness of the landlord due to continuation of such litigation over years together. It is observed that due to such delay, landlord takes steps to satisfy his own needs and Court cannot expect him to sit idle. It is held that in such cases, unless subsequent events totally eclipse the bonafide need of the landlord, the landlord will not lose his right to get possession on this ground. In the case reported as **AIR 1997 (SC) 2399 [Kamleshwar Prasad Vs. Pradumanju Agrawal]**, the Apex Court has laid down that if the requirements of the landlord had continued till the decision of the appellate Court, the High Court is not expected to interfere in the matter in a proceeding filed under Articles 226 and 227 of Constitution of India if some event took place after the decision of the appellate Court.

There cannot be any dispute over this proposition also. In any case, this Court has considered the subsequent developments as against the landlord. The developments as against tenants could have also be considered. Necessary observations are made in this regard. In view of the aforesaid discussion, this Court holds that there is no possibility of interference in the decision given in favour of the landlord on the ground of bonafide requirement for personal use."

10. In the present case, it cannot be said that the requirement of the landlord is totally eclipsed. Further, this circumstance was considered by the Trial Court. There are concurrent findings of the two Courts below. Considering the scope of the present proceeding, this Court holds that it is not possible to interfere in the decision given by the two Courts below.

11. In the result, the revision stands dismissed.

[T.V. NALAWADE, J.]

ssc/