

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

Civil Revision Application No. 18 of 2015

Parmeshwaridevi w/o Jayramdas Goyal. .. **Applicant.**

Versus

Bhagwandas s/o Balchand Lahoti
And Others.

.. **Respondents.**

Shri. S.E. Siddiqui, Advocate, for applicant.

Shri. P.R. Katneshwarkar, Advocate, for respondent Nos.1
and 2A.

CORAM: T.V. NALAWADE, J.

DATE : 19th NOVEMBER 2015

ORDER:

1) The proceeding is filed against the judgment and decree of Regular Civil Suit No.357 of 2009 which was pending in the Court of the Civil Judge, Junior Division, Jalna and also against the judgment and decree of Rent Appeal No.1/2013 which was pending in District Court Jalna. The suit of the present respondents, landlord, filed for eviction under the provisions of the Maharashtra Rent Control Act, 1999, is decided in their favour and the

order of eviction is given on the ground of bona fide requirement for personal use. Both the sides are heard.

2) The suit was filed in respect of western portion of Godown No.72 which is part and parcel of CTS No.399 situated at Old Mondha, Jalna city. The size of the suit premises is 12 ft. x 20 ft. The suit was filed by the two brothers viz Bhagwandas and Kishanlal. During pendency of the proceeding Kishanlal died and his son came on the record.

3) It is the case of the plaintiffs that they are owners of the suit property and the property was given in possession of the defendant's husband on rent basis. The suit was filed on two grounds like willful default committed by the tenant in making payment of monthly rent and on the ground of bona fide requirement for personal use. The trial Court had decreed the suit under both the grounds but the District Court has set side the finding given against the tenant in respect of willful default but the finding given under other ground is confirmed by the District Court.

4) It is the case of the plaintiffs that their sons have grown up and they require the suit premises for personal use. It is contended that plaintiffs, who are real brothers, have separated from each other and so they require more premises for business. Thus, the ground of bona fide requirement for personal use of members of the family of landlord was mentioned in the plaint.

5) The defendant contested the suit by filing written statement. She contended that plaintiffs own many properties in Jalna city and, therefore, the claim is not bona fide. She contended that plaintiffs have properties like Anandi Jin, Vijay Dal Mill, godown No.4 etc. It is contended that these properties are given on rent basis and the plaintiffs want to make income by giving the property on rent basis. Some other properties like Shop No.32 situated at seed market, Shop No.53 situated at New Mondha and one shop having size of 12 ft. x 17 ft. adjacent to the suit property are also mentioned in the written statement and it is contended that they also are owned and possessed by the landlord.

6) The issues of bona fide requirement and hardship were framed by the trial Court. Both sides gave evidence. The Courts below have held that the landlords have proved their bona fide requirement and greater hardship will be caused to landlords if eviction order is not made.

7) For proving the case, plaintiff No.1 examined himself and one witness is examined to prove bona fide requirement. Learned counsel for the applicant, defendant drew attention of this Court to some admissions given by plaintiff No.1 in the cross examination. The admissions are to the effect that plaintiffs own two shops and two houses in Jalna city. However, plaintiff No.1 has given evidence that one of the two shops is given on rent basis and other shop is in his use. He also gave evidence that he is in business of pulses, *Dal* and that business is being done under the name of Vijay Dal Mill. He admitted that Anandi Jin belongs to his wife and the wife had closed the business about 25 years back. Evidence is given that this property is now being used by his son. He has admitted that 3 shops are constructed in front of Anandi Jin and

they are given on rent basis by him. His evidence shows that his son is doing business of Dal in the concern Vijay Dal Mill and it is situated in the compound of Anandi Jin.

8) The evidence of plaintiff No.1 shows that he is separated from plaintiff No.2 and a son of plaintiff No.2 now needs more premises for business. The witness Ganeshprasad examined by the plaintiffs has admitted in the cross examination that son of plaintiff No.2 is working as commission agent.

9) In rebuttal, defendant has examined herself and she has examined her son Rajesh. Defendant has given evidence that the suit premises is being used by Rajesh for business purpose. Her evidence shows that she has no personal knowledge regarding the business which Rajesh is doing. She has avoided to give the particulars of occupation of her other son and probably he is also in the business. Her evidence shows that she has not disputed that plaintiffs are living separate and they have one son each.

10) Evidence is given by Rajesh and defendant that income from the business is their only source of income for their livelihood. They have given evidence that hardship will be caused to them if eviction order is made against them. In the cross examination, defendant's son has admitted that his house is three storied building and it is situated at a distance of 500 to 600 meters from the suit property.

11) At Exhibit 72 a letter given by Marketing Federation issued to the defendant is produced. It appears that correspondence was made by defendant with the Marketing Federation to collect information regarding the business of son of the plaintiff No.2. It is informed that the said son has obtained licence for doing business as agent and also for doing processing work.

12) The aforesaid evidence shows that no probability is created by the defendant that other premises is available in the same locality, old Mondha, which can be used by the son of plaintiff No.2 for the business. On the contrary, the evidence shows that he has

obtained licence from Marketing Federation and he was working as broker in the campus of Marketing Federation. In view of all these circumstances it is difficult to have doubt about the requirement of the son of the plaintiff No.2 of the suit premises for his own business. The premises is described as godown and admittedly son of plaintiff No.2 is doing some business.

13) No evidence is given by the defendant to show that any attempt was made by the defendant to search other alternate premises for the business. Both the parties are businessmen and so it is difficult to infer that hardship will be caused to the defendant if she is asked to vacate the premises. She can certainly take on rent other premises for doing business. Further for showing that plaintiffs have sufficient property and it is in occupation of the plaintiffs, no record is produced. The record like City Survey extract and assessment record should have been produced in respect of the properties of the plaintiffs. As such attempt is not made, inference is drawn that hardship will be caused to the landlord if eviction order is not made. Further, whether the suit premises is suitable

for the business which plaintiffs want to do needs to be considered from their point of view. Old Mondha is market place of Jalna and so plaintiffs want this property for their own business. Both the Courts have considered the aforesaid evidence and circumstances for giving finding against the tenant. These are the concurrent findings.

14) Learned counsel for the applicant placed reliance on cases reported as **(1998) 1 SCC 633 (S.J. Ebenezer v. Velayudhan)** and **(2001) 5 SCC 705 (Deena Nath v. Pooran Lal)**. Facts of the reported cases are altogether different and so they are of no help to the tenant. On the other hand learned counsel for the landlord placed reliance on a case report as **AIR 2003 SC 532 (Akhileshwar Kumar v. Mustaqim)**. Following observations are made :-

"Once it has been proved by a landlord that the suit accommodation is required bona fide by him for his own purpose and such satisfaction withstands the test of objective assessment by the Court of facts then choosing of the accommodation which would be reasonable to satisfy such requirement has to be left to the subjective choice of the needy. the Court cannot thrust upon its own choice on the needy. Of course, the choice has to be exercised reasonably and not whimsically."

Facts and circumstances of each and every case are always different. This Court has already discussed relevant facts of the present case.

15) Scope of revision is limited when there is concurrent finding on such point. The scope of revision is discussed by the Apex Court in the cases like (1) **AIR 1973 SC 76 (Managing Director (Mig) Hindustan Aeronautics Limited v. Ajit Prasad)**; (2) **AIR 1991 SC 1594 (Chandmal v. Firm Ram Chandra and Vishwanath)**; and (3) **AIR 1998 SC 3325 (Patel Valmik Himatlal v. Patel Mohanlal Muljibhai)**. Provision of Section 29(2) of Bombay Rent Act is also discussed by the Apex Court in the second case (cited supra) and it is observed that the High Court can correct errors which may make the decision contrary to law and which errors can go to the root of the decision but the power of revision is not available to re-hear the matter and re-appreciate the evidence. It is further laid down that the fact that different view is possible on re-appreciation of evidence cannot be a ground for exercising revisional jurisdiction. In view of this position of law and the facts and circumstances of the present case, this Court holds

that no interference is possible in the findings given by the Courts below.

16) In the result, the revision stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

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