

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 214 OF 2014

Madanraj S/o Hirachand Solanki
(Bhagrecha) Age-55 years,
Occu. Business, R/o. Nirmiti Gift
and Toys, Cross Bhande Galli,
Kondekar Building, Latur

.. Petitioner
(Orig. Deft. No.1)

Vs.

- 1] Ravichandra S/o Motilal Kondekar
Age-45 years, Occu.: Business
R/o. Cross Bhande Galli, Latur
- 2] Ishwarchandra S/o Motilal Kondekar,
Age-38 years, Occu.: Nil,
R/o. Cross Bhande Galli, Latur
- 3] Deshbhushan S/o Motilal Kondekar,
Age-33 years, Occu.: Business,
R/o Cross Bhande Galli, Latur

.. Orig. Plaintiffs

- 4] Mohanidevi W/o Hirachand Solanki
(Bhagrecha), Age-78 years
Occ.: Nil, R/o Masjid Road,
Patel Chambers, Latur
- 5] Vasantraj S/o Hirachand Solanki
(Bhagrecha), Age-61 years,
Occu.: Business, R/o 404, Akruti
Building, Karter Road No.3,
Borivali East, Mumbai
- 6] Jayantilal S/o Hirachand Solanki
(Bhagrecha), Age-58 years,
Occu.: Business, R/o. 404, Akruti
Building, Karter Road No.3,
Borivali East, Mumbai
- 7] Chandraprakash S/o Hirachand Solanki
(Bhagrecha), Age-52 years,
Occu.: Business, R/o. Lakshmi Bhandi
Stores, Subhash Chowk, Latur

.. Respondents

(Orig. Deft.2 to 5)

Mr. Suryakant S. Pawar, Advocate for the appellant
Mr. C.R. Deshpande, Advocate for the respondent nos.1 to 3

CORAM : M.T. JOSHI, J.

DATE : 11/06/2015

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. Heard finally, with consent of the parties.

2. Aggrieved by the decree of eviction and the concurrent findings of both the Courts below, the present revision application is preferred by the original defendant no.1 i.e. the tenant.

3. The admitted facts would show that C.T.S. No. 9636 of Latur as described in the plaint consist of three shops. The petitioner is occupying one of the shop i.e. the suit shop. In the year 1975, the same was leased to Hirachand i.e. predecessor of the petitioner and proforma respondents no.4 to 7. They are carrying the business of the stationery and other articles. In the circumstances, the respondents claim the possession of the same shop on the ground of bonafide and

reasonable occupation.

. According to the respondents-plaintiffs, the respondent no.1 to 3, at the time of filing of the suit, respondent no.1 had his shop in the shop premises of his uncle Mahavir. However, the uncle is pressing hard for taking possession of the same. Besides this, plaintiff no.2 / respondent no.2 - Ishwarchandra had no business, therefore, he helps other respondents-plaintiffs in their respective businesses. Respondent no.2 i.e. plaintiff no.2 also wants to start business of cutlery and imitation jewelry. In the circumstances, all the three shops are required for these three brothers and, therefore, the eviction of the present petitioner is sought.

4. According to the present petitioner-tenant, in fact, the uncle of the respondents and he forms undivided family. All of them have five shops and some open space. The shop of the tenant is old one i.e. since year 1991 since the time of their father. They had no other place to continue the said business. The business is old at the place and has attained the goodwill. In the circumstances, if they would be asked

to vacate the shop, they would suffer greater hardship and, therefore, they wanted that the suit be dismissed.

. The trial Court as well as appellate Court however concurred with the respondents no.1 to 3 and granted the decree, as detailed supra. Hence the present Revision Application.

5. Learned counsel for the petitioner Mr. Suryakant Pawar submits that in-fact the joint family property is having five shops and merely a show of partition with very uncle Mahavir is made for eviction of shop from respondent no.1. He further submits that a new business cannot be started by seeking eviction on the ground of bonafide occupation. For that purpose, he relies on the ratio of ***Shrirang Harikishan Agrawal V. M/s. Asha Electric Stores and anr. 2012 (6) ALL MR 186.***

. As regards the greater hardship, he submits that admittedly, the shop of the present respondents is very old and they have attended the goodwill at the place. On the other hand, the shop of the joint family of the landlords is continuing from rest of the shops in

the premises. He therefore relies on the ratio of ***Bismilla Bee W/o Sk. Chand and anr. Vs. Mohd. Anwar S/o Mohd. Akhtar 2010(2) Mh.L.J. 829.*** He submits that since both the Courts below have committed material irregularity, the findings be interfered and the revision application be allowed.

6. On the other hand, Mr. C.R. Deshpande submits that the evidence on record would show that the present respondents – landlords are already separate from their uncle Mahavir, therefore, the shops of Mahavir cannot be counted for consideration in the present case. Even the deposition of said Mahavir in the present case shows that he needs the shop which is in occupation of respondent no.1. Even respondent no.2 has no shop premises and, therefore, all the three shop premises would be required for three brothers. He further submits that the respondents-landlords would be the best judge to find out as to what would be the need and unless and until the said need is found to be unreasonable, there is no need to doubt the same.

. As regards the issue of greater hardship, he submits that the admissions in the cross-examination

from the petitioner shows that though various commercial complexes have been developed in the vicinity during last 10 years, no enquiry was made by him regarding availability of any shop and, therefore, no greater hardship would be caused to the petitioner in case the eviction is granted.

7. On the basis of this material, following point arise for my determination:-

. Whether the learned Courts below have committed material irregularities in passing the decrees ?

. My finding to the said point is in the negative. The Revision Application is therefore dismissed without any order as to costs for the reasons to follow.

R E A S O N S

8. The evidence on record appreciated by both the Courts below would show that Mahavir is separate from the present respondents. The evidence on record would also show that respondent no.1 carries business from

shop of said Mahavir. There is no evidence to show that respondent no.2 has any business. It is an admitted fact that two shops are in occupation of the present respondents. They are however three brothers. In the circumstances, there is no reason to doubt their case that they require the suit premises for bonafide occupation.

9. The reliance on the ratio of **Shrirang** (cited supra) is misplaced. The ratio of the said authority is based on the provision of section 15 sub section 3(a) clause (iii) of the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954, (for short "**the said Act**") which reads as under:-

3(a) A landlord may subject to the provisions of clause (d) apply to the Controller for an order directing the tenant to put the landlord in possession of the house -

(i) ..

(ii) ..

(iii) in case it is any other non-residential house, if the landlord is not occupying for purpose of a business which which he is carrying on, a non-residential house in the city, town or village concerned which is his own or to the possession of which he is entitled;

. The said Act provides that in case the landlord needs any non-residential house, he will have to show that he is carrying the business. Since respondent no.2 does not carry any business, the said authority would have been applicable. However, the present suit is of the year 2010, in the circumstances, Maharashtra Rent Control Act, 1999 would be applicable, which does not provide for the said condition.

. In that view of the matter, the authority has no application in the present case.

10. As regards the greater hardship, in the case of **Bismilla** (relied on supra), the trial Court as well as the District Court failed to advert to the question of greater hardship and, therefore, the matter was remanded back by the Hon'ble Single Judge of this Court, to have findings on the said issue.

11. In the present case, both the Courts below have adverted to the evidence on record, more particularly the admission of the petitioner no.1 would show that many commercial complexes have mushroomed in the vicinity within the period of 10 years but the

petitioner no.1 admitted that he did not make any enquiry regarding availability of any shop. He did not enquire regarding the rent or deposit to be made as against the pleading that exorbitant rent or deposit will have to be made. Since the petitioner failed to make any enquiry despite development of various commercial complexes, the issue of greater hardship will have to be answered in favour of the respondents - landlords. In the result, since no material irregularity in the findings of the trial Court as well as appellate Court is found, the following order:-

12. The Civil Revision Application is hereby dismissed without any order as to costs.

13. Upon pronouncement of the judgment, learned counsel for the petitioner submits that some time may be granted for vacation of the suit shop. He files on record an undertaking of the petitioner - Madanraj S/o Hirachand Solanki (Bhagrecha) to the effect that the suit shop would be vacated within a period of six months and that no third party interests would be created.

14. The undertaking is accepted on record and marked as "X" for the purpose of identification.

15. In view of the undertaking, it is hereby directed that the suit shop shall be vacated within a period of six (6) months.

16. Rule stands discharged.

[M.T. JOSHI]
JUDGE

arp/