

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 114 OF 2012
WITH
CIVIL APPLICATION NO. 64 OF 2012

M/s. Bhagwandas J. Bhangadiya .. Petitioner
vs.
Dharamchand Chandulal Jain .. Respondent

Mr. Yogendra Pendse for Petitioner.
Mr. Sandeep K. Shinde i/b. Mr. Chetan S. Damre for Respondent.

CORAM : M. S. SONAK, J.
DATE : 27 AUGUST 2015

P.C. :-

1] This civil revision application is directed against the following orders:

- (a) Judgment and decree dated 19 November 2003 made by the Joint Civil Judge, Junior Division, Satana;
- (b) Judgment and decree dated 26 September 2011 made by the District Judge, Malegaon;
- (c) Judgment and order dated 19 April 2014 made by the Civil Judge, Junior Division, Satana (on remand); and
- (d) Judgment and order dated 14 September 2014 made by the District Judge 1, Malegaon (confirming findings in aforesaid order dated 19 April 2014).

2] The petitioner was a tenant in respect of the suit premises which comprised one shop and one godown. The respondent - landlord instituted suit for eviction on the ground that the petitioner was in default in payment of rents and that the suit premises were required reasonably and bonafide by the landlord. By judgment and decree dated 19 November 2003, the Trial Court decreed the suit on both the grounds. The Appeal Court, dismissed the petitioner's appeal on 26 September 2011. The petitioner, whereupon instituted the present revision application. In this revision application, the petitioner took out a civil application alleging that the landlord had other premises, which have been let out to four tenants. Based upon the allegations in the civil application, this Court, directed the Trial Court to permit parties to lead evidence and to make an order with regard to veracity or otherwise of the allegations. The Trial Court, by its order dated 19 April 2014 has held that the allegations made by the petitioner were untrue. The Appeal Court, by order dated 14 September 2014, has confirmed the order dated 19 April 2014. The petitioner thereupon, has amended the civil revision application to question judgments and orders dated 19 April 2014 and 14 September 2014.

3] Mr. Pendse, the learned counsel for the petitioner has submitted that the requirement of the respondent - landlord was by

no means bonafide. In this regard, Mr. Pendse submitted that there was an agreement between the petitioner and the respondent for purchase of the suit premises, in pursuance of which the respondent had also made a part payment of Rs.25,000/-. As the respondent - landlord refused to honour the agreement, the petitioner, instituted a suit seeking specific performance. The suit was dismissed by the Trial Court and the Appeal Court, however directions were issued for refund of Rs.25,000/- with interest. Soon after dismissal of the suit, the respondent - landlord issued notice claiming arrears for a period of over 13 years and sought for possession on the ground of reasonable and bonafide requirement. Mr. Pendse submits that this circumstance by itself, affects the bonafides of the requirement. Mr. Pendse further submits that the pleadings in the plaint itself make it clear that the landlord had in his possession one shop and one godown independent of the suit premises. Further, in the evidence, there is admission of one of such godown is unused. Mr. Pendse submits that these circumstances were enough to turn down the landlord's plea of reasonable and bonafide requirement.

4] Mr. Pendse further submitted that in this case there was a serious dispute as to whether the monthly rent was Rs.2250/- of Rs.515/-. The Courts, have incorrectly placed the burden of proving

the negative upon the petitioner. That apart, Mr. Pendse submitted that since Rs.25,000/- had already been paid by the petitioner to the landlord, credit was required to be given by way of adjustment of the said amount towards alleged arrears of rent. Finally, Mr. Pendse submitted that during the pendency of the proceedings, the arrears were deposited in the Court and therefore by virtue of the provisions contained in Section 12(3) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ("Rent Act") no decree on the grounds of default in payment of arrears of rent could ever have been made against the petitioner.

5] Finally, Mr. Pendse submitted that the orders made by the Trial Court and the Appeal Court pursuant to remand are vitiated by perversity. Mr. Pendse maintains that the respondent - landlord does own alternate premises which have been let out to four tenants and this aspect, completely rules out the making of any decree of eviction on the grounds of reasonable and bonafide requirement.

6] Mr. Shinde, the learned counsel for the respondent - landlord on the other hand submitted that this is a case where two Courts, on no less than two occasions, have recorded concurrent findings of fact. Such findings are amply borne by the material on record and

there is no perversity whatsoever in the record of the same. In such circumstances, Mr. Shinde submitted that there is no case made out to exercise jurisdiction under Section 115 of the CPC.

7] That apart, Mr. Shinde submitted that the evidence on record bears out that the petitioner has several other business premises and further the petitioner in the course of his deposition has admitted that he is in a financial position to acquire alternate premises. Mr. Shinde pointed out that the petitioner's defence that the landlord had purchased certain groceries and the amounts towards such purchase were to be adjusted against the rents, was never made good by the petitioner. In these circumstances, Mr. Shinde submitted that there is absolutely no warrant for interference with the impugned orders.

8] Finally, Mr. Shinde submitted that though upon remand, the two Courts have returned findings of fact that the petitioner's allegations were based upon fabricated documents. The two Courts have held that the premises which are let out to four tenants do not belong to the respondent - landlord and consequently, there arises no question of the respondent - landlord letting them out. In view of such findings, which according to Mr. Shinde, are borne from the material on record, jurisdiction under Section 115 of the CPC ought

not to be exercised in favour of the petitioner in the present matter.

9] Rival contentions now fall for consideration.

10] At the outset, it is required to be noted that this Court, in exercise of jurisdiction under Section 115 of the CPC does not, exercise any appellate jurisdiction. In matters of interference with findings of fact, it is not expected that this Court re-appreciates the entire material on record, as if it were an appellate Court. Therefore, unless the petitioner is in a position to demonstrate that concurrent findings of fact recorded by the two Courts on not less than two occasions, are vitiated by perversity, there is no occasion to interfere with such findings of fact.

11] The two Courts, in the present case upheld that there was default on the part of the petitioner in payment of rents. The submission that the amount of Rs.25,000/-, which was admittedly paid by the petitioner in pursuance of some agreement of sale, has to be adjusted towards arrears of rent, is quite misconceived. At no stage, did the petitioner requests for any such adjustment prior to the receipt of notice under Section 12(2) of the Rent Act or for that matter in response to the notice under Section 12(2) of the Rent Act. That apart, the material on record establishes that the petitioner

neither paid nor offered to pay even the admitted arrears on the basis that the monthly rent was Rs.250/- within a period of one month from the date of receipt of statutory notices. No doubt, some payments were made in the Court after the suit was instituted. However, here again, the entire payments were not deposited upon the spacious plea that some adjustment was due as against the purchases of groceries by the landlord. In these circumstances, the two Courts, rightly declined the benefit of provisions contained in Section 12(3) of the Rent Act to the petitioner. Ultimately, the petitioner was unable to make good his contention of the respondent - landlord having purchased groceries and some agreement as to adjustment towards rents. Clearly therefore, there is no perversity in the record of findings of fact by the two Courts on the aspect of default in payment of rents.

12] On the aspect of reasonable and bonafide requirements, it is to be noted that the respondent - landlord, in the plaint had disclosed retention of possession in respect of one shop and one godown. Despite such retention, it was the case of the respondent - landlord that the suit premises are required reasonably and bonafide, particularly for the business of the landlord's two sons. There is sufficient evidence led in the context of both reasonability as well as bonafides. The two Courts have also considered the

aspect of comparative hardship. In this context, the two Courts have taken into consideration the circumstance that the petitioner does have several other commercial premises and further, the petitioner has himself admitted in the cross-examination that his financial position is such that he can acquire alternate premises. There is no material produced on record by the petitioner to indicate the steps that he may have taken in order to acquire alternate premises. Ultimately, it is to be noted that for the purposes of obtaining recovery of possession on the ground of reasonable and bonafide requirement, it is not for the landlord to establish some sort of dire need. In this case, there is evidence that the petitioner has two sons who intend to do business through the suit premises in addition to the premises which they already have. There is no perversity in the findings of fact recorded by the two Courts.

13] The petitioner, made a solemn statement that the respondent - landlord has acquired alternate premises and thereafter, the same have been let out to four tenants. Based upon solemn statement, this Court was persuaded to remand the matter to the Trial Court for the purposes of record of findings. The Trial Court as well as Appeal Court, in terms have held that the so-called alternate premises neither belonged to the respondent - landlord nor can it be said that the same have been leased out by the respondent - landlord. Apart

from the contention that the findings are perverse, no perversity whatsoever was demonstrated with regard to the concurrent findings recorded by the two Courts. It is therefore clear that the petitioner has continued in possession of the suit premises on the basis of a case, which is ultimately found to be completely untrue. In these circumstances, Mr. Shinde is right that the equitable jurisdiction under Section 115 of the CPC cannot be exercised in favour of such a petitioner. Even otherwise, the petitioner has not made out any case warranting exercise of such jurisdiction. For all the aforesaid reasons, this civil revision application is dismissed. There shall be no order as to costs.

14] In view of disposal of the civil revision application, civil application no. 64 of 2012 does not survive and is disposed of accordingly.

(M. S. SONAK, J.)