

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

CIVIL REVN. APPLICATION NO. 263 OF 2014

Mohan Laxman Hadkar

... Applicant

v/s

Smt.Sulbha Jayant Kudaskar & ors.

... Respondents

Mr.M.A. Dudhane along with S.S. Redekar for the applicant.

Mr.V.R. Tripathi for the respondents.

CORAM: N. M. JAMDAR, J.

DATED : 21ST APRIL, 2015

ORAL ORDER:

By this revision application, the applicant challenges the judgment and decree passed by the learned Small Causes Court, Mumbai, dated 29 June 2007, directing eviction of the applicant from the premises and the judgment and order passed by the Appellate Bench of the Small Causes Court, Mumbai, dated 20 December 2013, dismissing the appeal.

2 The premises in question are Room No.4 in Kudaskar Bungalow at Survey No.66, Bhandup, Village Bhandup (East), Mumbai. The applicant was monthly tenant of the premises which was let out for residence by the respondents to the applicant. The original owner and landlord of the premises expired leaving behind

a widow and three daughters. The suit was filed by them for eviction of the applicant. The learned Small Causes Court framed issues as regard the validity of the notice, change of user, nuisance and bonafide requirement of the respondents. The learned Small Causes Court held the issues as regard the bonafide requirement and nuisance against the respondents, however, granted decree on the ground that the applicant had changed the user of the premises by judgment and decree dated 29 June 2007. Thereafter the applicant filed an appeal bearing No.482 of 2007 in the Appellate Bench of the Small Causes Court and the respondents filed Cross-objection No.4 of 2007. The learned Appellate Bench framed issues as regard default in payment of rent, non-user, bonafide requirement, change of user and nuisance. The Appellate Bench reversed the finding of the Trial Court on the ground of bonafide requirement and comparative hardship and held the same in favour of the respondents. The Appellate Bench also held that the applicant had not used the premises without reasonable cause for the purpose of letting out for the period of six months preceding the date of the suit. The Appellate Bench reversed the finding as regard the change of user and held the same in favour of the applicant. Accordingly, by judgment and order dated 28 December 2013 the Appellate Bench dismissed the appeal and allowed the cross-objection.

3. As regard the finding as to the bonafide requirement is concerned, learned counsel for the applicant submitted that,

initially a suit was filed for need of four plaintiffs and at present only one plaintiff is alive, others having been expired. He submitted that the rooms in possession of the respondents are three with balcony and it is no longer necessary to evict the applicant from the room in his possession. Though this submission is *prima facie* appealing, the applicant will not succeed on this ground alone as the finding of non-user is against the applicant.

4 Learned counsel for the applicant submitted that the Trial Court had not framed the issue as regard the non-use. However, the respondents had filed cross-objection for this very purpose making a grievance about the same and the Appellate Bench had framed the issue regarding non-use and gave opportunity to both the parties. The applicants themselves produced electricity bills on record. The electricity bills for the months of July 2002 onwards, for almost two years show the electric consumption was zero for the suit premises. Though the applicant had produced ration card, when he was confronted in the cross-examination as to why he had stopped purchasing ration on the basis of the ration card, the answer of the applicant was that the shopkeeper has refused to give the supply, which cannot be believed. Not only this but the gas connection of the premises were transferred by the applicant to another premises in Sadguru Co-operative Housing Society, which are admittedly owned by the applicant. These facts, if are taken cumulatively, clearly indicate that the applicant was not residing in the suit premises during the relevant period preceding the suit and

was residing in Sadguru Co-operative Housing Society flat which is acquired by the applicant.

5 Learned counsel for the applicant submitted that there were reasons why the applicant did not reside in the premises during the relevant period. He submitted that the condition of the premises was not good and there was no water supply. If the applicant had to reside elsewhere because the landlord had not kept the present premises in habitable condition, one would expect at least a single communication from the applicant to the landlord calling upon him to repair the premises or putting him to notice that he is unable to occupy the same. The learned Appellate Bench has rightly taken note of the fact that a criminal complaint was lodged by the applicant after the termination notice was served on the applicant.

6 In view of the above factual position, the inference drawn by the Appellate Bench that the applicant had not used the premises for the requisite period, without any reasonable cause, is a possible view after assessing the evidence. Merely because some other view is possible is not a ground to interfere in revisional jurisdiction. There is no perversity in the finding and reasoning of the appellate Bench.

7 The revision application, therefore, cannot be entertained and is rejected.

(N. M. JAMDAR, J.)