

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

CIVIL REVN. APPLICATION NO. 203 OF 2013

Kashinath S. Dhale

... Applicant

v/s

Yunus M. Hanjgikare & ors.

... Respondents

Mr. Anand Kulkarni for the applicant.

None present for the respondents.

CORAM: NITIN M. JAMDAR, J.

DATED : 26TH MARCH, 2015

P.C.:

Heard learned counsel for the applicant.

2. By this application, the applicant seeks to set aside the judgment and decree passed by the learned Civil Judge, Jr. Divn., Solapur, dated 1 March 2002 and the judgment and order passed by the District Judge, Solapur, dated 8 September 2011, whereby the suit filed by the applicant has been dismissed.

3 The applicant claims himself as a tenant of the respondent Nos.1 to 4. The premises are situated at Solapur and are residential premises. The applicant filed the Suit No.23 of 1999 in the Court of Joint Civil Judge, Jr. Divn., Solapur, contending that the applicant was in possession of two rooms i.e. Room No.2013 and 2006 as a tenant. It is the case of the applicant that the respondent landlord asked the applicant to hand over the

possession of one room for temporary period, which was handed over by the applicant, and when the applicant demanded it back, the respondent landlord refused. Accordingly, the applicant filed the suit for recovery of possession of Room No.2013. The respondent landlord filed written statement and contested the claim of the applicant. It was contended that, since the applicant found suitable place somewhere else, had vacated the room 15 to 20 years back and the room is let out to some other person.

4 The learned Civil Judge, Jr. Divn., Solapur, after considering the evidence on record, came to the conclusion that the appellant could not prove the case that he was in possession of the said room and that it was handed over to the respondent landlord in the year 1998. Accordingly, by the judgment and decree dated 1 March 2002 the suit was dismissed. Thereafter the applicant filed Civil Appeal No.210 of 2002 which was also dismissed by the learned District Judge, Solapur, by judgment and decree dated 8 September 2011.

5 Both the Courts below have considered the evidence on record. The Courts have found that the notice which was issued by the applicant did not refer to the cause of action ensued in May 1998. If the possession was surrendered as sought to be contended by the applicant, it would have been mentioned in the notice before instituting the suit. Both the Courts, after assessing the evidence, found that the theory put up by the applicant that he voluntarily

relinquished the room, is not believable. Normally, the tenant would not voluntarily surrender the premises in his possession unless the tenant does not require it. The contention of the respondent was that the plaintiff had vacated the room long time back as he found suitable place elsewhere, is more in tune in normal human conduct than the case put up by the applicant. This being the position, the burden was on the applicant to establish that he voluntarily relinquished the room. The applicant has failed to establish this burden by leading cogent evidence. No error, therefore, can be found with the decision of both the Courts below.

6. The learned counsel for the applicant submitted that the respondent landlord has agreed to sell the room in question to the applicant. The matter was adjourned time and again to arrive at a settlement. Finally, the matter was kept for dismissal by an order dated 9 March 2015. It is clarified that, even if I am not inclined to entertain the revision application, it will not preclude the applicant and the respondent landlord in entering into such commercial transaction in respect of the room in question.

7. The civil revision application, therefore, cannot be entertained and is accordingly rejected with the above clarification.

(NITIN M. JAMDAR, J.)