

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.585 OF 2015**

Prakash Uttamchand Surana

..Applicant

Vs.

Urdu Library

..Respondent

Mr. S. R. Page for the Applicant

CORAM : R. M. SAVANT, J.

DATE : 30th NOVEMBER, 2015

P.C.

1 There is a concurrent finding recorded by the Courts below in favour of the Respondent trust which is the landlord of the suit premises as regards its entitlement to a decree on the ground of bonafide requirement. Both the Courts below have on the basis of the material on record have reached the said conclusion. Both the Courts below have however dismissed the Suit seeking eviction on two other grounds namely non user and subletting. The premises in question is a shop in the building owned by the Respondent trust which was rented out to the Applicant which was initially granted to the Applicant on lease basis. The Applicant was paying rent initially at Rs.150/- per month which was thereafter increased to Rs.225/- per month. The Respondent is a public trust which runs a library in Malegaon Town. It seems that the membership of the Respondent was initially about 500, however, with

the increase in population, it is the case of the Respondent that its membership has increased manifold and therefore it requires the said premises bonafide for its own use. The Suit was therefore filed on the said basis, however two other grounds were also made out in the Suit namely of non user and illegal subletting. The case of the Defendant was one of denial. The Defendant interalia averred that the Plaintiff has other premises in the building on the first floor wherein the library was conducted. The parties went to trial. The issue relating to non user, subletting and bonafide requirement were framed by the Trial Court. The parties led their evidence in respect of the said issues. In the evidence on behalf of the Plaintiff it has come on record that after filing of the present Suit, the Defendant had succeeded in the Suits filed by him and had obtained possession of two other premises. It had also come on record that the Defendant was carrying on business of sugar in the Kakani Nagar Vachanalaya Shopping Center at Malegaon. In so far as the Plaintiff is concerned, the Defendant could not produced any material to support his contention that other premises in the said building are available to the Plaintiff.

2 The Trial Court applied test applicable to a public trust in so far as the case of bonafide requirement is concerned which have been laid down by this Court from time to time which test is to the effect that in so far as the trust is concerned, the trust has merely to show its need for the premises and need not prove its bonafide requirement. The Trial Court at one stage also held that

the test of comparative hardship cannot be applied in a case where the trust seeks possession of the premises on the ground of bonafide requirement. But thereafter even applying the said test held that the point of comparative hardship weighs in favour of the trust than the Defendant. The Trial Court accordingly decreed the Suit on the ground of bonafide requirement and as indicated above has refused to pass the decree on the ground of non user and subletting.

3 The judgment and decree passed by the Trial Court dated 17-10-2006 was carried in Appeal by the Defendant by filing Regular Civil Appeal No.89 of 2006. The Lower Appellate Court i.e. the Learned District Judge-II and Additional Sessions Judge, Malegaon on a re-appreciation of the material on record confirmed the finding of the Trial Court in so far as the bonafide requirement is concerned. In so far as the ground of tenability of the Suit on the ground of not having obtained the permission of the Charity Commissioner, the Learned Counsel for the Applicant Mr. Page fairly stated that the Applicant is not pressing the said point.

4 In the light of the concurrent orders passed by the Courts below, no case for exercise of Revisionary Jurisdiction is made out. The Civil Revision Application is accordingly dismissed.

5 At this stage, the Learned Counsel for the Applicant prays for time to vacate the premises. In the facts and circumstances of the case, time up to 30-3-2016 is granted on the Applicant filing the usual undertaking in this Court, as also the deposit of rent up to 31-5-2015 in this Court within 4 weeks from date. Since the Applicant is hospitalised and in a coma as per the instructions of Advocate Mr. Chopda given to the Learned Counsel for the Applicant Mr. Page, the son of the Applicant to file the said undertaking and also make the deposit. If either of the two are not complied with, the benefit of this order would not enure to the Applicant and then the Respondent would be free to execute the decree.

[R.M.SAVANT, J]