

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

CIVIL REVISION APPLICATION NO. 354 OF 2014

Subhash Nago Shimpi

..Applicant

Vs.

Gangabai Motilal Kayastha & Ors.

..Respondents

....

Mr. Milind Sathaye, Advocate for Applicant.

Mr. Sandesh Patil, Advocate for Respondent No.1-B.

....

CORAM : N.M. JAMDAR, J.

DATED : 24 MARCH 2015

P.C.:

By this revision application, the applicant challenges the judgment and decree dated 23 October 2013 passed by the District Judge, Malegaon confirming the judgment and decree dated 19 August 2006 passed by the learned Civil Judge, Junior Division, Malegaon directing the applicants to handover the possession of the premises let out to them.

2. The respondent (plaintiff) filed a suit for recovery of damages, rent and possession from the applicant. According to the plaintiff, the applicant had committed default in payment of rent, erected permanent structure, acquired alternate premises. The premises were needed for bonafide personal use of the plaintiff. It is the case of the plaintiff that

the plaintiff is the owner of the house in CTS No. 123 and out of the said house, the applicant was to be in possession as tenant. Plaintiff's three sons have now become major. Plaintiff needed the house property for the purpose of starting their business. Subsequently by amendment, the plaintiff also pleaded that the number of family members has gone up and the premises in possession of the applicant needed for the purpose of residence of the plaintiff's family members.

3. The learned Small Cause Court Judge did not accept the ground of default alleged by the plaintiff and also as regard permanent constructions, but held in favour of the plaintiff as regard reasonable bonafide requirement and that the applicant had acquired suitable accommodation. Accordingly, the learned Civil Judge Junior Division, Malegaon by judgment and decree dated 19 August 2006 directed the applicant to handover the vacant possession of the suit premises. The applicant thereafter filed a civil appeal in the District Court, Malegaon. The learned District Judge, Malegaon considered the evidence in detail and by his judgment and decree dated 23 October 2013 dismissed the appeal.

4. It is come to record that the plaintiff, in the year 2001 had 14 members in family which consisted of three married couples and their children. Except the elder son and his wife, the family members of the

landlady resides in two rooms in upper floor in House No. 67-A. Mr. Sathaye, learned Counsel for the applicant contended that the plaintiff has various other premises and it is not necessary for the plaintiff to recover the possession of the suit premises from the applicant. Mr. Sathaye submitted that during the pendency of the appeal, the applicant wanted to produce certain additional material on record which was not granted. Thereafter the applicant filed a Writ Petition in this Court which was disposed of on 5 November 2014. He submitted that various documents were permitted to be placed on record by order dated 5 November 2012, the effect of which has not been considered by the Appeal Bench.

5. The respondent had specifically pleaded their requirement. It was the case of the applicant that plaintiff has other premises and that they had documentary evidence in that regard. Then the applicant ought to point out which was the property available. Only two properties were pointed out i.e. CTS No. 67-A which has two rooms, and CTS NO. 67-B having five rooms.

6. As regards CTS-67-A is concerned, only two rooms are available. In these two rooms, one son of the plaintiff has carries on the business alongwith her brother-in-law. It is contended by the learned Counsel for the applicant that this shop is not being used and therefore

there is no question of need to start another business. Even assuming as these rooms are available, it is not sufficient for the need needed by the plaintiff in respect of 14 members in her family. As regards the premises at CTS NO. 67-B are concerned, there is a finding that these premises are not in good condition. Even assuming that all the seven rooms are now available, the need of the plaintiff has to be taken into consideration. There are three married couples with families, which would require independent premises. It is not necessary for the plaintiff to mathematically demonstrate the square feet required for each family member, and then claim the rooms accordingly. The future need also needs to be taken into consideration. Therefore even assuming the submission of Mr. Sathaye that these seven rooms are available, the need of the plaintiff and her 14 members in the family cannot be said to be not bonafide. Today the family also must have grown and the children grown up.

7. On the other hand, it has been observed by the learned District Judge that two sons of the tenant are residing separately at Kalyan and Badlapur. The suit was instituted in the year 1982 and the applicant could have searched alternate premises for his business. It is also observed by the learned District Judge that the house CTS No.170 in Malegaon is partitioned, and two shop blocks have come to the share of

the applicant.

8. In the circumstances, I find no perversity in appreciation of evidence or error of jurisdiction in the orders of both the Courts below. The Revision Application is accordingly dismissed.

9. At this stage the applicant seeks continuation of the interim order dated 12 September 2014. Considering the facts and circumstances of the case, I am inclined to continue the interim order for three weeks. However, it will take some time to make the order copy available, it is directed that the interim order dated 12 September 2014 shall continue for a period of four weeks from today.

[N.M. JAMDAR, J.]