

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

CIVIL REVISION APPLICATION NO.366 OF 2015

Shri. Ravindra Gajanan Bhosale and others .. Applicants

Versus

Shri. Giridhar Fakirchand Rathod and another .. Respondents

Mr. S. P. Thorat, for the Applicants.

Mr. Mukund Pise, for the Respondents.

CORAM : R.M. SAVANT, J.

DATE : 18th DECEMBER, 2015

PC.

1. The judgment and order dated 26.02.2015 passed by the Learned Adhoc District Judge -6, Pune, dismissing the Appeal in question being Civil Appeal No.169 of 2014 and thereby confirming the judgment and decree dated 15.01.2014 passed by the Trial Court i.e. the Learned 4th Additional Judge, Small Causes Court, Pune, is taken exception to by way of the above Civil Revision Application. The suit in question being Regular Civil Suit No.458 of 2007 was filed for eviction of the Applicants on the ground of bonafide requirement of the Plaintiffs. It is the case of the Plaintiffs that the suit premises which is a shop admeasuring 10 ft. X 8 ft.

on the western side of the house bearing No.1362 more appropriately described in the plaint is bonafide required by them for the purposes of running a “Bhel” shop. It was the case of the Plaintiffs that the suit was filed on behalf of the two Plaintiffs. It was the case of the Plaintiffs that a partition has taken place between them in the year 1989 vide registered Partition Deed which was executed. As result of the said partition the eastern portion of the suit property came to the share of the Plaintiff No.2 whereas the western portion of the suit property came to be share of the Plaintiff No.1. The instant suit premises are situated on the western side of the suit property which according to the Plaintiffs has come to the share of the Plaintiff No.1. It was the case of the Plaintiffs that the Plaintiff No.1 and his sons were carrying on business in a rented premises in house No.1642 owned by one Shri. Suresh Dattatraya Baleghate. The Plaintiffs in the said premises were running a Bhel shop. The landlord Shri. Suresh Baleghate had filed Civil Suit No.254 of 1999 against the Plaintiff No.1 under Section 13(i)(ix) of the Bombay Rent Act, 1947 on the ground of bonafide requirement. The said suit was decreed by the Small Causes Court, Pune. Against the said decree the Plaintiff No.1 had filed Civil Appeal No.177 of 2002 which came to be dismissed by the Lower Appellate Court. Against the said dismissal the Plaintiff No.1 had filed Writ Petition No.540 of 2003 in this Court which Writ Petition also came to be

dismissed. Thereafter SLP filed by the Plaintiff No.1 also came to be dismissed by the Apex Court and therefore the Plaintiff No.1 had to vacate the suit premises wherein he was conducting Bhel shop. In so far as the instant suit is concerned, the parties led evidence in respect of their respective assertions. The Plaintiffs led evidence in support of their case that they bonafide required the suit premises for conducting the Bhel shop by the Plaintiff No.1 whereas it was the case of the Defendants that the Plaintiffs have other premises and therefore, the case on the ground of bonafide requirement is not made out. The Defendants also questioned the case of the Plaintiffs that a partition had taken place between them. The Trial Court on the basis of the evidence on record deemed it appropriate to decree the suit in question by judgment and order dated 15.01.2014. In so far as the aspect of partition is concerned, the Trial Court has observed that in a suit filed under the Rent Act, it is not necessary for the Court to go into the said aspect. However, the Trial Court observed that it would have to consider the case of the Plaintiffs for the eviction of the Defendants on the ground of bonafide requirement. The Trial Court considered the evidence adduced by the parties in respect of the said ground. In so far as the evidence of the Defendants is concerned, wherein the Defendants had sought to bring on record the factum of certain rented premises becoming available to the Plaintiffs. The Trial Court held that the

said premises were residential premises and therefore could not be used for commercial purposes as there is prohibition under Section 30 of the Rent Act. The Trial Court thereafter adjudicated the issue as regards bonafide requirement. The Trial Court adverted to the fact that the Plaintiff No.1 had lost right up to the Apex Court in the suit filed by his landlord in respect of the tenanted premises wherein he was running the Bhel shop. The Trial Court held that in view of the fact that the Plaintiff No.1 had to hand over premises to his landlord, the Plaintiff No.1 did not have the premises to conduct his Bhel shop. On the other hand, the Trial Court observed that the Defendant had got allotment as a project affected person of the Koyna Project and therefore, the hardship would be more to the Plaintiffs if the decree was not passed than if the decree was passed against the Defendants. The Trial Court also observed that the consumption of the electricity units discloses that the premises were not in use by the Defendants or that there was intermittent use by the Defendants of the suit premises and therefore case was made out by the Plaintiffs for grant of a decree on the ground of bonafide requirement and accordingly decreed the suit by judgment and order dated 15.01.2014.

2. The judgment and decree passed by the Trial Court was carried in Appeal by the Defendants by way of Civil Appeal No.169 of 2014. The Lower Appellate Court had on a re-appreciation of the material

on record did not find any reason to differ with the findings recorded by the Trial Court as regards bonafide requirement and hardship. The Lower Appellate Court reiterated the finding of the Trial Court that more hardship would be caused to the Plaintiffs if the decree was not passed than to the Defendants if the decree was passed. In so far as the availability of the other premises to the Plaintiffs is concerned, the Lower Appellate Court observed that it is not for the Defendants to dictate to the Plaintiffs as to how they are to use the premises which are belonging to them. Hence, there is a concurrent decree passed by the Courts below on the ground of bonafide requirement of the Plaintiffs/landlords.

3. The Learned Counsel appearing on behalf of the Applicants sought to reiterate the case of the Defendants in the Courts below. The Learned Counsel once again sought to draw this Court's attention to the certain other premises available to the Plaintiffs. In my view, it is not possible to accept the said contention in the light of the findings of fact recorded by the Courts below on the aspect of bonafide requirement as also hardship. In that view of the matter, no case for exercise of the revisionary jurisdiction of this Court is made out. The Civil Revision Application is accordingly dismissed.

4. At this stage, the Learned Counsel seeks time to vacate the premises. In the facts and circumstances of the case, the Applicants are

granted time up to 28.02.2016 to vacate the premises on the usual undertaking being filed in this Court within four weeks from date. If the undertaking is not filed, then the Respondents herein would be free to execute the decree in accordance with law.

[R.M. SAVANT, J]