

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 292 OF 2015

Tulshiram Purushotram Dhotre ... Applicant

vs.

Shri Laxman Kashinath Giri ... Respondent

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Mr. Ajit Jaywant Kanjule for the applicant.

Mr. Uday Warunjikar for the respondent.

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CORAM : M.S. SONAK, J.

DATE : 9th SEPTEMBER, 2015.

P.C.:

1. Civil Revision Application challenges the judgement and decree dated 17/01/2005 and 23/03/2015 made by the trial Court and appeal Court ordering eviction of the applicant on the ground of default in the payment of rent as also reasonable bonafide requirement.

2. Having heard the learned counsel for the parties and perused the record, in my judgement, there is no case made out to exercise revisional jurisdiction and to interfere with concurrent findings of fact recorded by the two Courts, particularly because the applicant in the present case failed to even step into the witness box and establish the defence raised by him in the written statement.

3. On the aspect of default in the payment of rent, Mr. A.J. Kanjule, learned counsel for the applicant submits that there was an agreement between the applicant and the respondent that the applicant

would construct the suit premises. An amount of Rs.300/- per month would be adjusted from the amount of Rs. 18,400/- expended by the applicant towards the construction of the suit premises. Mr. Kanjule submitted that if this aspect were to be taken into consideration, then, the applicant could not be said to be a defaulter in the matter of payment of rent.

4. It is not possible to accept the aforesaid contention of Mr. Kanjule. Upon receipt of statutory notice, the applicant did not take up such defence. After the suit was instituted the applicant did not, avail the opportunity of depositing the rent within a period of 90 days from the date of the summons of the suit, so as to avoid decree of eviction on the ground of default in payment of rent. Such provision is contained in section 15(3) of the Maharashtra Rent Control Act 1999 (Rent Act). Assuming that there was some dispute in the matter of payment of standard rent, the applicant could always have instituted necessary proceedings for the determination of standard rent. Even this exercise was never undertaken by the applicant. Above all, the applicant did not lead any evidence before the trial Court for the purpose of establishing such defence. In such circumstances, the trial Court was right in making a decree of eviction on the ground of default in payment of rent.

5. Before the appeal Court, the applicant by resort to the

provision of Order 41 Rule 27 of the Civil Procedure Code 1908 (CPC), produced letter dated 14/06/1997 in order to establish his defence. The Appellate Court upon consideration of this letter has noted that there is a serious dispute as to whether rent payable was Rs.300/- per month as claimed by the applicant or Rs.800/- per month as claimed by the landlord. Accordingly, the appellate court, rightly declined to interfere with the eviction decree made by the trial Court. There is no jurisdictional error in the approach of the Appellate Court.

6. That apart from two Courts have made a decree of eviction on the ground that the suit premises are required reasonably bonafidely by the land lord. In this regard, the landlord has produced material on record to establish that he has taken voluntary retirement and that he needs to commence grocery business in the suit premises which are virtually adjacent to the premises, where he resides. The landlord has deposed that his wife is suffering from serious ailments and therefore the landlord needs to commence business at a place very close to his place of residence. Concurrent findings of facts recorded by the two Courts are borne from the material on record and consequently there is no perversity in the record of the same.

7. On the aspect of hardship the onus lies upon the applicant tenant. The applicant tenant having failed to even step into the witness

box has failed to discharge such onus. Even otherwise there is material on record to indicate that the applicant is a contractor. There is no material on record to indicate the efforts, if any, taken by the applicant to secure alternate premises.

8. In exercise of powers under section 115 of the CPC, this Court does not exercise any appellate jurisdiction. Therefore, unless it is established that the findings of fact concurrently recorded by the two Courts suffer from perversity, there is no question of any interference.

9. Accordingly this Revision Application is dismissed. There shall be no order as to costs.

10. At this stage, learned counsel for the petitioner seeks stay upon the execution of eviction decree for a period of six weeks from today. Subject to the applicant filing usual undertaking in this Court within a period of two weeks from today and furnishing a copy of such undertaking to the learned counsel for the respondent-landlord before the same is filed, the eviction decree shall not be put in execution for a period of six weeks from today.

(M.S. SONAK, J.)

CERTIFICATE

“Certified to be true and correct copy of original
signed Judgment/Order.”