

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.766 OF 2014

Mrs. Juanita Ashok Ubale.] ... Applicant

Versus

Raj Chopra and Anr.] ... Respondents

Mr. P. S. Dani, Senior Advocate, i/b Ms. Jui Nerurkar for Applicant.
Mr. P. K. Dhakephalkar, Senior Advocate, i/b B. R. Dalal for Respondents.

CORAM :- M. S. SONAK, J.
DATE :- OCTOBER 13, 2015

P. C. :-

1. By this Civil Revision Application, the applicant challenges Judgments and Decrees dated 06/12/2012 and 08/05/2014 made by the Small Causes Court ('Trial Court') and the Appellate Bench of the Small Causes Court ('Appeal Court') directing the eviction of the applicant from the suit premises on the ground that the same are required reasonably and *bona fide* by the respondent-landlord; default in payment of rent and permanent alteration, without the consent of the landlord. The findings of fact recorded by the two Courts are concurrent, at least insofar as the grounds of *bona fide* requirement and permanent alternation are concerned.

2. Mr. P. S. Dani, learned Senior Advocate appearing for applicant, has submitted that the two Courts have misconstrued the evidence on record and there is clear perversity in the record of findings of fact. Mr. Dani submitted that there is no admission on the part of Pritam Ubale, son of defendant no.2, who was examined on her behalf, that the defendant no.2 owns a bungalow at Santacruz and that the defendant no.2 is in a position to occupy the same. That apart, Mr. Dani submitted that such aspects may, at the highest, have been relevant in the context of determining the issue of comparative hardship. However, before advertng to the issue of comparative hardship, the Courts were required to satisfy themselves whether the grounds of reasonable and *bona fide* requirement had at all been made out by the landlord. Mr. Dani submitted that in the present case, apart from the bare statement of PW 1 Raj Chopra (PW 1) who was almost 84 years of age at the time of his deposition, there is no other evidence to establish that the requirement, as pleaded, was either reasonable or *bona fide*. Besides, the requirement was pleaded in respect of the grandchildren. The grandchildren were never examined and in these circumstances, it cannot be said that the ground of reasonable and *bona fide* requirement was made out by the landlord. On the other aspects, Mr. Dani submitted that there was no material on record to make eviction decree on the grounds of default in payment of rent or permanent alteration. For all these reasons, Mr. Dani submitted that the impugned Judgments and Decrees warrant interference.

3. Mr. P. K. Dhakephalkar, learned Senior Advocate appearing for respondents, submitted that in this case, the two Courts have recorded concurrent findings of fact. There is no perversity and therefore, no case is made out to exercise revisional jurisdiction.

4. Having heard the learned Counsel for parties and perused the record, there is no case made out to exercise the revisional jurisdiction and interfere with the impugned Judgments and Decrees. In this case, there is no ground to accept that the two Courts have either failed to exercise jurisdiction or acted in excess of jurisdiction. This is also not a case where the material irregularity has been alleged. The findings of fact recorded concurrently by the two Courts, at least on the aspect of *bona fide* requirement and permanent alteration, are sufficiently borne out from the material on record and there is no perversity in the record of the same. In the exercise of revisional jurisdiction, it is not expected that this Court re-appreciate the material on record with a view to examine whether a different view is possible. As long as the findings of fact are borne out from the material on record, there is no reason to interfere with such findings of fact in the exercise of revisional jurisdiction.

5. On the aspect of reasonable and *bona fide* requirement, the pleadings were substantially clear and elaborate. The landlord had set out in details the reasons why the possession of the suit premises was necessary to be recovered. The landlord has pointed out that he and his brother are in the film industry and that the landlord is

required to visit Mumbai very often, for the purposes of his business activities, which includes not merely film production, but also travel agency. There are pleadings that the grandson of the landlord is desirous of venturing into the film industry at Mumbai and for this purpose, the recovery of possession of the suit premises is necessary. The necessity of granddaughter who, at the time of institution of the suit was studying in America, to return to Mumbai, has also been pleaded. There are pleadings that the landlord used to earlier reside with his brother B. R. Chopra and that after the demise of the brother, his family members do not very much appreciate the landlord residing with them. Raj Chopra (PW 1) has filed the detailed affidavit in lieu of examination-in-chief deposing to the circumstances set out in the pleadings. The cross-examination, to say the least, is sketchy and there is absence of even formal denials. The cross-examination, does not even advert to the grounds of default in payment of rents or permanent alteration. On the aspect of *bona fide* requirement as well, the cross-examination is totally casual and on the basis of the same, it cannot be said that any dent has been made to the deposition of Raj Chopra (PW 1).

6. The tenant Mrs. Juanita Ashok Ubale did not examine herself. Instead, her son Pritam ubale came to be examined on her behalf. Again, on the basis of his deposition, it cannot be said that any dent has been made to the case of the landlord. It has come on record that the tenant Mrs. Juanita Ashok Ubale, by her letter dated 23/10/1986 (Exh.43) addressed to Raj Chopra (landlord), had agreed

to hand over the suit premises to the landlord. Pritam Ubale, when confronted with this document, did not deny the same or the contents thereof but merely proceeded to state that such letter was addressed by Mrs. Juanita Ashok Ubale under duress. Now, if the tenant was indeed serious in alleging duress, then the tenant could have herself stepped into the witness box and explained the circumstances in which such letter was addressed. Besides, there is no document produced revoking the offer to hand over the suit premises within some reasonable time after the address of letter dated 23/10/1986 or for that matter, at all.

7. There is evidence that the tenant has acquired a bungalow at Santacruz. There are virtually admissions to this effect in the deposition of Pritam Ubale. Such bungalow was inherited by the tenant from her own father. Pritam Ubale did depose that there was some litigation pending in relation to the bungalow and there was restraint order, due to which they could not occupy the bungalow. Despite opportunity coupled with the statement by the said Pritam Ubale that the casepapers and the restraint order will be produced, Pritam Ubale failed to produce the same in the course of his evidence. In fact, Pritam Ubale claimed that he does not even have or know the suit number in which the said restraint order has been made. This, indeed, calls for drawal of adverse inference. The material on record establishes that the landlords have made out a case that they require the suit premises reasonably and *bona fide*. The material on record also establishes that the comparative hardship which will occasion to

the applicant will be far less than that which will occasion to the landlord in case decree of eviction is denied.

8. On the aspect of default and permanent alteration, as noted earlier, in the cross-examination of Raj Chopra, not even a suggestion was put up denying the facts and circumstances which constitute such grounds. That apart, the landlord has examined one Devraj Harichand Thareja, Treasurer of the Chand CHS Ltd. ('Society') in which the suit premises are situated. This witness has deposed to the permanent alteration carried out by the tenant in respect of the suit premises. The nature of such permanent alteration has been elaborately deposed to by the said witness. Again, in the cross-examination, no dent whatsoever has been made to the deposition of the said witness. There is no case made out that the said witness was either not independent or was an interested witness. There is absolutely no reason to disbelieve the deposition of the said witness.

9. Thus upon cumulative consideration of the aforesaid facts and circumstances, there is absolutely no case made out to interfere with the concurrent findings of fact recorded by the two Courts on the aspect of reasonable and *bona fide* requirement and permanent alteration. The finding of fact with regard to default in the payment of rent is also borne out from the material on record and there is no case made out to disturb such finding of fact. The two Courts have considered the legal position with regard to the reasonable and *bona fide* requirement as also, other grounds and there is no misdirection in law or perversity of approach.

10. Accordingly, this Civil Revision Application is dismissed. There shall be no order as to costs.

11. At this stage, Mr. Dani seeks a direction that the eviction order be not executed for a period of eight weeks from today as the applicant desires to take recourse against the Judgment and Order before the Hon'ble Apex Court. Subject to the applicant and all adult family members in the family filing the usual undertaking in the Registry of this Court within a period of three weeks from today, the eviction decree shall not be put into execution for a period of eight weeks from today. Copies of such undertaking/s to be furnished to the learned Counsel for respondents before the same are filed in the Registry.

(M. S. SONAK, J.)