

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

WRIT PETITION NO.6899 OF 2015

**Mrs. Najmunnisa Sayyed Habib
since deceased through her LRs
Altaf Habib Sayyed and ors.**

: Petitioners.

versus

Rajesh Ramesh Polas and anr.

: Respondents.

**Mr. R M Haridas a/w Mr. S S Choudhari for the Petitioners.
Mr. Yogesh R Mehta for the Respondent Nos.1 and 2.**

CORAM : R. M. SAVANT, J.

DATE : 24th November 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 02/02/2015 passed by the learned Ad-hoc District Judge-4, Pune by which order the Appeal in question being Civil Appeal No.230 of 2009 filed by the Petitioners came to be dismissed and the Cross Objection also came to be rejected and resultantly the decree passed by the Trial Court dated 02/02/2009 came to be confirmed.

2 The suit premises is a shop admeasuring 150 sq.ft situated at Babajan Chowk, Pune Contentment Board, Tal. Haveli Dist. Pune. The Respondent No.1 is the original Plaintiff, whereas the Petitioners are the heirs of the original Defendant. The original Defendant Smt. Najmunnisa Sayyed Habib was a tenant and paying rent at the rate of Rs.70 per month plus Rs.4.20

as taxes. The said premises were rented to the original Defendant about 30 years back. In the said premises a flour mill was being conducted. The suit in question came to be filed on the ground of bonafide requirement as the Plaintiff was a law graduate and wanted to start his legal practice in the said premises.

3 The parties went to trial. The evidence of the original Defendant Smt. Najmunissa Sayyed Habib was recorded wherein she has stated in her cross examination that she had three sons one of whom had died and the two remaining sons were Altaf and Mehaboob aged about 25 years and 24 years respectively. She has further stated that Altaf is a rickshaw driver whereas Mehaboob is a tempo driver. It has come in her evidence that she has no personal experience of operating the flour mill and the same was being operated by her by appointing an employee for the same. The Plaintiff also led his evidence and it has come in his evidence that he is occupying a premises admeasuring 400 sq.ft. behind the suit premises wherein he is residing and that the suit premises are required by him for starting his legal practice.

4 The Trial Court on the basis of the evidence on record held that the ground of bonafide requirement has been proved by the Plaintiff. In so far as comparative hardship is concerned, the Trial Court held that more hardship would be caused to the Plaintiff if the suit is not decreed than to the

Defendants if the suit was decreed. The Trial Court has accordingly by its judgment and decree dated 02/02/2009 decreed the suit in question.

5 The Defendants i.e. the heirs of the original Defendant Smt. Najmunnissa Sayyed Habib carried the matter in Appeal by way of Civil Appeal No.230 of 2009. In the light of the grounds on which the eviction was sought and in the light of the findings recorded by the Trial Court, the Lower Appellate Court framed two issues amongst other issues, which are to the effect as to whether the suit premises are required reasonably and bonafide by the Plaintiff and whether the Plaintiff will suffer greater hardship than the Defendants by the refusal of the decree. The Lower Appellate Court has answered the said issue in favour of the Plaintiff. The Lower Appellate Court has adverted to the fact that one son of the original Defendant by name Altaf was driving a rickshaw whereas another son Mehaboob was a tempo driver and that they were residing separately from the original Defendant. The Lower Appellate Court has also adverted to the fact that it has come in the evidence of the Defendant that she has no personal knowledge of operating the flour mill and that she is operating it through her employee. The Lower Appellate Court therefore concluded that at the time of the death of original Defendant none of the family members were doing the business with the deceased Defendant.

6 In so far as comparative hardship is concerned, the Lower

Appellate Court has in paragraph 26 of the impugned order has observed that in fact after the death of the deceased tenant, the other legal representatives cannot proceed with the Appeal, because they do not fall in the category of persons becoming tenant in place of the deceased tenant in terms of the definition of tenant under Section 7(15)(d) of the Maharashtra Rent Control Act. Therefore, the Lower Appellate Court questioned the entitlement of the heirs of the deceased Defendant to prosecute the Appeal.

7 However, as indicated above, prior to the said observation, the Lower Appellate Court has observed that none of the heirs of the deceased Defendant were carrying on business with the tenant i.e. the deceased Defendant at the time of the death of the tenant. The observation of the Lower Appellate Court as regards the locus standi of the heirs would therefore have to be considered in the context of the observation made earlier. After so considering the matter, the Lower Appellate Court held that the decree passed by the Trial Court does not merit any interference at the hands of the Appellate Court.

8 The learned counsel appearing on behalf of the Petitioners sought to contend that the aspect of comparative hardship has not been dealt with in a proper manner by the Lower Appellate Court and in fact there is no consideration at all by the Lower Appellate Court of the said aspect. The

learned counsel would also contend that the Lower Appellate Court has lost sight on the fact that the Plaintiff had acquired a flat which ought to have been a relevant consideration whilst adjudicating upon the issue as to bonafide requirement. In my view there is no merit in the said contentions. Both the Courts below have by taking into consideration the material on record which is in the form of deposition of the parties have arrived at a conclusion that the Plaintiff has made out a case for a decree on the ground of bonafide requirements and that greater hardship would be caused to the Plaintiff if the decree is refused.

9 In so far as the flat is concerned, the said aspect has been dealt with by the Lower Appellate Court in paragraph 24 of its order wherein the Lower Appellate Court has adverted to the fact that the flat was purchased in the name of the wife of the Plaintiff who has expired and the residential premises cannot be considered as suitable for the purposes of office as the Plaintiff desires to start his legal practice from the suit premises. The Plaintiff cannot be put in a position of falling foul of the regulations by using residential premises for the purposes of office. In my view, having regard to the concurrent orders passed by the Courts below, no case for interdiction in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

10 At this stage, the learned counsel appearing on behalf of the Petitioners Shri Haridas seeks stay of the decree so as to enable the Petitioners to approach the Apex Court. In the facts and circumstances of the present case, the decree not to be executed for a period of six weeks from date.

[R.M.SAVANT, J]