

Sequeira

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

*CIVIL REVISION APPLICATION NO. 109 OF 2014
WITH
CIVIL APPLICATION NO. 457 OF 2014.*

Mr.Rajendra Shankar Pille .. Applicant
Vs.
Shri Dilip Damu Raskar. .. Respondent.

Mr.Salil Ray, for the Applicant in both Applications.
Mr.Jaydeep Deo, for the Respondent.

*CORAM: N.M.Jamdar, J.
Wednesday 22 April, 2015*

Oral Order :

By this Revision the Applicant challenges the Judgment and Decree dated 18 August 2012 passed by District Judge, dismissing the appeal and confirming the Judgment and Decree dated 29 October 2010 passed by the Small Cause Court Judge, Pune.

2 By the impugned orders the Applicant has been directed to vacate the suit premises which are rooms on the ground floor of House/ City Survey No.276 in Bhavani Peth, Pune admeasuring 10 x 10 ft. The Respondent filed a suit against the Applicant bearing No.503 of 2008 in the Small Causes Court, Pune seeking possession of the suit premises from the Applicant. The Applicant filed a

Written statement and contested the suit. The learned Civil Judge framed issues as regards the default in claim of arrears of rent, bonafide requirement of the Respondent and decreed the suit on these two grounds, by Judgment and Decree dated 29 October 2010. Thereafter the Respondent filed an appeal bearing No.448 of 2011 in the District Court Pune. The learned District Judge, Pune after hearing both the sides and considering the evidence on record dismissed the appeal by order dated 18 August 2012 and confirmed the finding of the learned Civil Judge, on the ground of arrears of rent and bonafide requirement. Thereafter the Applicant filed present Revision Application.

3 The Revision Application was filed with a delay of 250 days. By Civil Application No.451 of 2013, delay was condoned. Thereafter the Revision Application came up on board before Mrs. Sondur Baldota J., and on 20 March 2014 following order came to be passed-

“1). Mr. Gorwardkar, learned Advocate appearing for the respondent, tenders an Undertaking on behalf of the respondent, that he alongwith his family members, will vacate the suit premises on/or before 30th April, 2015. The Undertaking is accepted and taken on file. The same is marked 'X' for identification.

2). Mr. Gorwardkar, states that the respondent is residing in the premises alongwith his wife, son and daughter. He requests for some time for filing similar Undertakings of the adult members of his family i.e. wife, son of the respondent. Stand over by 2 weeks.”

4 Thereafter the Revision Application again came up on 23

April 2014 before Mrs.Sondur Baldota J., and the following order was passed.

“1). Mr. Gorwadkar, learned Advocate appearing for the applicant, informs the Court that, the family members of the applicant do not desire to file Undertakings similar to that filed by him. This has created an embarrassing situation for him and he does not desire to continue with the matter. Since the applicant is present in the Court, notice for discharge need not be served upon him. Advocate Mr.Gorwadkar is discharged from the proceedings.

2). Mr. Deo, requests that in such situation, the time granted to the applicant to vacate the suit premises until 30th April, 2015 cannot be justified and that the order is required to be vacated. With withdrawal of the appearance by Mr. Gorwadkar, the applicant needs to be given time to engage Advocate. Hence, stand over to 7th May, 2014 to enable the applicant to engage a lawyer. To be placed, high-on-board.”

5 The notice was accordingly issued to the Applicant. Thereafter he engaged an advocate and request was made to file an application for withdrawal of undertaking. Thereafter the Civil Application No.457 of 2014 was filed by the Applicant seeking withdrawal of the undertaking. At the time of hearing of the Civil Application on 18 April 2015, following order was passed

“The learned counsel for the Respondent states that though it is his contention that by filing the application, the Applicant has abused the process of law and exemplary costs needs to be imposed, any further hearing in the Civil Application will only prolong the grant of stay and the Respondent is not averse to hearing the Applicant on merits again, so as to save time.

2 Stand over to 22 April 2015, high on Board. It is made clear that the Civil Application along with Civil Revision Application will be taken up for consideration on merits on that date and no adjournment will be granted.”

6 The Civil Revision Application was placed on board today for arguments. I have heard the learned counsel for the parties and perused the impugned orders.

7 The suit was filed by the Respondent on the ground of default and bonafide requirement. As regards the bonafide requirement is concerned, it has come on record that the Respondent has an agricultural land at village Kasari, which is some distance away from city of Pune. The family of the Respondent consists of four members with two sons. The sons in the year 2011 were taking education in 11th and 12th Standard respectively. These two sons have finished their college education and would require premises in the city for their future growth. It has come on record that the Respondent has one room in the suit premises. It is the contention of the learned counsel for the Applicant that there are various tenants in the property however, the Respondent has chosen to file suit only against the Applicant. However, this contention cannot be accepted as it is a choice of the landlord as to from which tenant he would recover the premises.

8 The learned counsel for the applicant submitted that village where the Respondent has agricultural land is not 45 to 50 kms.

from Pune but it is 30 kms. This hardly makes any difference as admittedly, this is an agricultural land and not premises in the city. The need of the Respondent stood established. Applicant had admitted that he did not make any efforts to find out alternative accommodation after receipt of suit summons and therefore, the learned Judge has rightly negated the claim of comparative hardship. Therefore, there is no perversity or error in the view taken by the Courts below. The Revision application accordingly cannot be entertained.

9 I would reject the application on merits and leave it at that, but the disturbing conduct on the part of the Applicant must be taken notice of.

10 When the Civil Revision initially came on board on 20 March 2014, the learned counsel for the Applicant had tendered undertaking on behalf of the Applicant that he along with his family members would vacate the premises on or before 30 April 2015. This undertaking was accepted and he had sought time to file similar undertaking on behalf of the family members. The undertaking was filed on affidavit by the Applicant duly verified before the Section Officer of this Court. After the undertaking was so filed, the stand was taken by the Applicant that the Advocate for the Applicant misguided him into filing the affidavit and since he did not understand English and simply signed the understanding at the instance of the Advocate. In the Civil Application No.457 of 2014, this statement is made on oath.

11 When I adjourned the application and placed the matter to be heard on merits, I had informed Mr.Ray learned counsel now appearing for the Applicant that he should satisfy himself regarding the genuineness of the claim of the Applicant that he does not know English language. When the matter was called out today, the attention of Mr.Ray was drawn to the written statement filed by the Applicant in the Small Causes Court, which is annexed to the revision filed by the application. In this written statement the Applicant has signed in clear English language as R.S.Pille. After taking instructions from the applicant who is present in the court, Mr.Ray candidly admitted that he was embarrassed by the conduct of the applicant.

12 The conduct of the Applicant has to be strongly deprecated. It is not possible that the Applicant who has signed in English and has fought the litigation in two Courts would not know that what was he signing when he affirmed an undertaking. The Applicant has sought to disown the affidavit by making reckless allegations against the Advocate. Even the present advocate is put in embarrassing position by him. The applicant is trying to pervert the judicial process. He deserves no indulgence. In any case, there is no case on merits as well. A case for imposition of heavy costs is made out. Accordingly, the revision Application is dismissed with costs of Rs.50,000/-.

13 If the cost is not paid to the Respondent within period of two

weeks from today, it shall be recovered as arrears of rent revenue. Mr.Ray, at this stage makes a request for time to vacate on undertaking. Considering the past conduct of the Applicant, I am not inclined to grant any time to vacate. Request is refused. Ad-interim relief stands vacated.

Civil Application stands disposed of accordingly.

(N.M.Jamdar, J.)