

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 532 OF 2015

Vasant D. Kamat .. Applicant
vs.
V.P. Bedekar & Sons Pvt. Ltd. .. Respondent

Mr. M.A. Dudhane for the Applicant.
Mr. N.V. Walawalkar, Sr. Advocate i/b Ms Chandraprabha B. Khona
for the Respondent.

CORAM : M. S. SONAK, J.
DATE : 08 SEPTEMBER 2015.

P.C. :-

1] This Civil Revision Application challenges the judgments and decrees dated 17 June 2010 and 29 July 2015 made by the Trial Court and the Appeal Court ordering the eviction of the applicant from the suit premises on the grounds of unlawful subletting and reasonable and bonafide requirement.

2] Mr. Dudhane, learned counsel for the applicant, has submitted that in this case, the two Courts have not taken into consideration the aspect of comparative hardship. Mr. Dudhane submitted that the applicant had merely entered into a franchise Agreement and therefore, no case of subletting as such was made out. Finally, Mr. Dudhane submitted that if the two Courts were to appreciate the material on record in a better perspective and in the right spirit, there was no case made out for issuing eviction decrees.

3] Mr. Walawalkar, learned senior advocate for the respondent-landlord, on the other hand, submitted that there are concurrent findings of recorded by the two Courts. There is absolutely no perversity in the record of same and therefore, this Court exercising revisional jurisdiction under Section 115 of the Code of Civil Procedure, 1908 (CPC) ought not to interfere with the impugned judgments and decrees.

4] Having heard the learned counsel for the parties and perused the record, in my judgment, no case is made out to interfere with the concurrent findings of fact recorded by the two Courts.

5] On the aspect of unlawful subletting, the two Courts have rightly taken into consideration the circumstance that Pawan Associates Man Power Division and Courier Services (Pawan Associates) was carrying on business in the suit premises. The applicant has admitted that the applicant has received consideration in the range of Rs.3000/- per month from said Pawan Associates. There is on record, correspondences or rather, a letter in which the applicant had admitted that he was inducting a third party and requested the landlord not to initiate any action in the matter. The

two Courts have considered the material on record, including the sign board of Pawan Associates from which, it is apparent that the suit premises had been unlawfully sublet by the applicant. The applicant, despite opportunity, was unable to produce the so called franchise Agreement between himself and Pawan Associates. Such document, if indeed existence, would have been a material piece of evidence. The two Courts have rightly drawn adverse inference against the applicant.

6] In matters of such nature, once it is found that some stranger is in occupation of the suit premises, the onus of explaining the circumstance is upon the original tenant. It is not possible for the landlord to decipher the basis upon which the stranger is carrying on business in the suit premises. In the present case, the applicant has failed to discharge such onus. There is no perversity in the record of finding of fact. The relevant evidence has been taken into consideration. There is no allegation that irrelevant evidence has formed the basis for the finding of fact.

7] Even on the aspect of bonafide requirement, findings of fact are borne from the material on record. The two Courts have

specifically considered the issue of comparative hardship. The Appeal Court, in paragraphs 35 and 36 of the impugned judgment and decree has taken note of the expanding business of the landlord and consequent need for the suit premises. Further, the Appeal Court has also noted that the applicant had infact closed down his original business and had sublet the suit premises to Pawan Associates. The Appeal Court has also noted that the applicant, except for making a bare statement that he has searched for alternate premises, had not placed in material in that regard. The Appeal Court has also taken into consideration the financial circumstance of the both applicant as well as his family members. One of the applicant's son serves in De-Mart Company and another works as a Manager in a Shipping Company at Dubai. Therefore, the two Courts have applied the correct tests and principles in the matter of determining whether or not the need pleaded by the landlord was reasonable and bonafide. The aspect of comparative hardship has also been examined by the two Courts and there is no perversity demonstrated.

8] This Court under Section 115 of the CPC does not exercise any appellate jurisdiction. Therefore, unless some error of jurisdiction is

pointed out, there is no question of interference. As noted earlier, even the concurrent findings of fact recorded by the two Courts are not vitiated by perversity. There is neither any illegality nor any material irregularity in the making of impugned judgments and decrees.

9] Accordingly, present Civil Revision Application is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

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CERTIFICATE

**“I certify that this Order uploaded is a true
and correct copy of original signed Order.”**