

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

CIVIL REVN. APPLICATION NO. 741 OF 2013

Chhidu w/o Abdul Latif Ansari & ors. ... Applicants

v/s

Shakil Usman Kokani & ors. ... Respondents

Mr.Sandip Shinde for the applicants.

Mr.Girish Agrawal for Respondent Nos.1 and 2.

CORAM: NITIN M. JAMDAR, J.

DATED : 1ST APRIL, 2015

ORAL ORDER:

Heard learned counsel for the parties.

2. By this civil revision application, the applicants challenge the judgment and decree passed by the Civil Judge, Junior Division, Nashik, dated 17 March 2011 and the judgment and order passed by the District Judge, Nashik, dated 25 June 2013, decreeing the suit filed by the respondents and directing the applicants to hand over possession of the premises. The premises in question are, a Municipal House No.1245, CTS No.1972, admeasuring 10 x 20 sq. ft. The premises are situated within the limits of Nashik Municipal Corporation. The applicants are running the hotel business from the said premises.

3. The respondents/plaintiffs purchased the property on 23 May 2002. Civil Suit No.361 of 2006 was filed by the respondents/plaintiffs in the Court of Joint Civil Judge, junior Division, Nashik. The respondents claim possession from the applicants on the ground of bonafide requirement and arrears of rent. The applicants appeared in suit and contested the suit by filing their written statement. The suit was decreed by the learned Civil Judge on the ground of bonafide requirement and default, by an order dated 17 March 2011. Thereafter the applicants preferred an appeal bearing Civil Appeal No.80 of 2011 in the District Court, Nashik, which was dismissed by the learned District Judge on 25 June 2013, confirming the finding of the learned Civil Judge, on the ground of bonafide requirement and default in payment of rent. The applicants have challenged these orders in the present application.

4. Both the Courts below have concurrently upheld the case of the respondents on the ground of bonafide requirement and that the applicants have failed to pay the rent of the premises. The learned counsel for the applicants, firstly, submitted that the notice issued by the respondents is bad in law as it refers to the area of the property as 10 x 20 sq.ft. when in fact the area is 35 x 15 sq.ft. and there cannot be any partial termination of tenancy. This submission has been considered by both the Courts below. The applicants relied upon the evidence of DW-3 Jayendra Valhabdas Pabari, who is an Architect. The Court, after assessment of the

evidence, came to the conclusion that the report of the Architect could not be relied upon as there were certain contradictory statements in the report as well as in his evidence. Both the Courts relied upon the assessment register for the year 1999-2000 which shows the area as 10 x 20 sq.ft. The learned counsel for the applicants submitted that both the Courts below have not noticed that what is mentioned in the register is the area in meters and not in feet. This argument was not raised before the Courts below. Even otherwise, a perusal of the register shows that though in the printed form of heading square meters is mentioned, in the area column dimensions have been specified, in which, over the figure of "20", there is a symbol of feet. The learned counsel for the applicants submitted that since there is no symbol of 'feet' over the figure "10", it has to be taken as in meters. This is a completely new argument being made. It is not conceivable that the authorities will maintain the record with two measurement systems. Even if it is, nothing precluded the applicants from proving the fact that this was the methodology adopted by the Municipal Corporation in recording the measurements. Hence, this contention cannot be considered and it has no merits.

5. The learned counsel for the applicants then submitted that the finding of bonafide requirement is not correct as the applicants are having hotel business for the last 40 years and acquired goodwill and on the other hand the respondents/plaintiffs have hotel business. He submitted that, greater hardship will be caused

to the applicants if evicted. It has come on record that the respondent/plaintiff No.2, for whose benefits the premises were sought to be acquired, is selling vegetables, while his brother and father own a hotel in the same locality. It is the case of the respondents, which has been accepted by both the Courts below that, the plaintiff No.2 is required to sell vegetables because he has no premises to start his own business. The plaintiff No.2 is married. If he wants to start his independent hotel business like his brother and father, his requirement cannot be considered as not bonafide. As regard the hardship to the applicants is concerned, it has come on record that, in spite of the notice issued 10 years back, the applicants have not looked for the alternate premises. Both the Courts below have taken note of the fact that the applicants have purchased open plots, and the fact that they are running hotel business for the last 40 years, are financially capable of looking for an alternate place. The only argument is that, the applicants should be allowed to continue in the running hotel business since they are conducting the same for the last 40 years. If decree is refused to the respondents, the plaintiff No.2 will continue to sell the vegetables in spite of having premises on ownership, while other family members and the applicant happily running their own hotel business. The notion of comparative hardship cannot be stretched to such absurd limits.

6. In the circumstances, the findings recorded by both the Courts below on the ground of bonafide requirement cannot be

interfered and there is no merit in this civil revision application.

7. The civil revision application is accordingly rejected.

(*NITIN M. JAMDAR, J.*)