

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

CIVIL REVISION APPLICATION NO.597 OF 2015

Balvant Daulat Patil

.. Applicant

Versus

Indubai Dhadku Sonaje

.. Respondent

Mr. S. V. Walve, for the Applicant.

Mr. S. R. Ganbavale, for the Respondent.

CORAM : R.M. SAVANT, J.

DATE : 9th DECEMBER, 2015

PC.

1. The Revisionary Jurisdiction of this Court is invoked against the judgment and order dated 28.07.2015 passed by the Learned Adhoc District Judge-1, Malegaon, District Nashik, by which order the Appeal filed by the Petitioner being Regular Civil Appeal No.33 of 2010 came to be dismissed and resultantly, judgment and decree dated 18.03.2010 passed by the Learned Civil Judge, Junior Division at Satana in Regular Civil Suit No.203 of 2000 came to be confirmed. The suit premises is a room being Room No.1 on the plot of land in question being CTS No.1045 which was let out to the Defendant for the monthly rent of Rs.350/- for residential purposes. The eviction of the Defendant was sought inter-alia on the ground of bonafide requirement of the Plaintiff and also the ground

that the Defendant has acquired alternate accommodation. The Trial Court accordingly framed the said two issues. The parties led evidence in assertion of their respective cases. The Trial Court on the basis of the evidence on record and especially the evidence of PW-1 Dilip has recorded a finding of fact that the suit premises are required for the two sons of the Plaintiff who are residing away from Satana. The Trial Court also commented adversely as regards the stand of the defendant, as initially the Defendant had taken a stand that he was residing in the premises and later on he has changed his stand that the suit premises are required by him to carry out charitable purposes by way of providing medical aid. The Trial Court has in fact termed the said case of the Defendant as false in view of the fact his licence to practice medical profession was suspended. In so far as the acquisition of alternate accommodation is concerned, the Trial Court has referred to the fact that the Defendant has acquired alternate accommodation and therefore does not require the suit premises. The Trial Court has also recorded a finding that greater hardship would be caused to the Plaintiff, if the decree was not passed as then the Plaintiff's sons would not be in a position to use the premises either for residence or for carry out business, than to the Defendant if the decree were to be passed as the Defendant has acquired suitable alternate premises. The Trial Court has accordingly as indicated above by the judgment and order

dated 18.03.2010 decreed the suit.

2. The aggrieved Defendant carried the matter in Appeal by filing Regular Civil Appeal No.33 of 2010. The Lower Appellate Court on a reconsideration of the material on record did not deem it appropriate to differ with the findings of the Trial Court in so far as bonafide requirement and acquisition of alternate premises by the Defendant is concerned. The Lower Appellate Court has accordingly dismissed the Appeal and confirmed the decree passed by the Trial Court.

3. The Learned Counsel appearing for the Applicant Mr. S. V. Walve would contend that the Courts below have wrongly held that the suit premises are required bonafide by the Plaintiff for settling her sons as her sons are already well settled at four different places which are mentioned in the evidence of the DW-1. It was the submission of the Learned Counsel that the fact that four rooms are already available with the Plaintiff has also not been taken into consideration by the Courts below. In my view, it is not possible to accept the said contentions urged on behalf of the Applicant, in so far as the availability of the four rooms are concerned, the Trial Court in paragraph 10 of its judgment has specifically referred to the said aspect and has recorded a finding that the Defendant has not proved that the said rooms are available to the Plaintiff.

In so far as the bonafide requirement of the sons of the Plaintiff are concerned, the Courts below on the basis of the material on record have held that the suit premises are required for the two sons of the Plaintiff who are unemployed. In the teeth of the said finding recorded by the Courts below, there is no substance in the said contention urged on behalf of the Applicant. In so far as bonafide requirement is concerned, it is well settled that the tenant cannot dictate as to the manner in which the premises are to be utilized by the landlord. In that view of the matter, no case for interference in the Revisionary Jurisdiction of this Court is made out. The Civil Revision Application is accordingly dismissed.

4. At this stage, the Learned Counsel appearing for the Applicant seeks stay of the eviction decree for sometime. The same is opposed to on behalf of the Respondent. In the facts and circumstances of the case, decree is stayed for a period of eight weeks from date on the usual undertaking filed by the Applicant within two weeks from date.

[R.M. SAVANT, J]