

Sequeira

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

CIVIL REVISION APPLICATION NO. 139 OF 2015.

Mr.Kanhiyalal Tulsiram Mundada

Since expired during pendency of appeal
represented, by legal heirs (a) to (I)

(a) Tulsibai Kanhiyalal Mundada & ors.

.. Applicants

Vs.

Shri Manoj Ramlal Shrigod and ors.

.. Respondents

Mr.N.C.Walimbe, for Applicants.

Mr.Jaydeep Deo, for Respondents.

CORAM: N.M.Jamdar, J.

Wednesday 22 April, 2015

Oral Order :

Heard learned counsel for the parties. **Rule.** Rule made returnable forthwith. By consent of the learned counsel for the parties, upon instructions, taken up for final disposal.

2 By this Civil Revision Application, the Applicants challenge the Judgment and Decree passed by the District Judge, Pune dated 29 September 2014 directing the eviction of the Applicants from the suit premises. The premises in question consists of one room admeasuring 27 x 10 ft., one hall of 14 x 12 ft. including the passage on the first floor in the property bearing CTS No.806, Guruwar Peth, Pune. The Respondents filed Civil Suit No.493 of 2008 in the Small Causes Court, Pune seeking eviction of the Applicants. The suit was filed by the Respondents on the ground

that the Applicants have become defaulters because of non-payment of rent and the premises are needed for Respondents personal use and occupation. The learned Small Causes Court considered the evidence on record and heard both the sides. The learned Judge, came to the conclusion that the Respondents failed to prove that they required the suit premises reasonably and bonafide for their occupation and that they also failed to prove that the Applicants were in arrears of rent. Accordingly the learned Judge, Small Causes Court, by Judgment and Order dated 23 July 2010 dismissed the suit. Thereafter the Respondents filed a Civil appeal in the District Court Pune, bearing Appeal No.574 of 2010. The learned District Judge came to the conclusion that the Respondents had made out a case that they require the premises for their personal use bonafide and that the Applicants were defaulters in payment of rent. Accordingly, the appeal was allowed by order dated 29 September 2014.

3 Having gone through the impugned Judgment and Order passed by the learned District Judge, Pune and after hearing the arguments, I find that the decision rendered by the learned District Judge is not based on satisfactory reasons at all. The appeal to the District court is a statutory appeal and being the final court on facts, the learned District Judge was under obligation to consider all facets of the matter. This is so particularly so since the learned District Judge reversed the findings of the learned Judge Small Causes Court.

4 As regards the *bonafide* requirement, the Small Causes Court had held that there are adequate number of rooms available to the Respondents and they had not disclosed that they own two flats. While reversing this finding of the learned Judge, Small Causes Court, the learned District Judge has only referred to the position of law that it is the landlord's choice to select the premises. What is the effect of non-disclosure of the two flats, whether any adverse inference is to be drawn against the Respondents, if not, whether the acquisition of these flats would satisfy the need of the Respondents, were some of the issues that arose for consideration. The Respondents may have explanation for these allegations of the Applicants, but the learned District Judge has not considered any of the issues.

5 Even in respect of the ground of default, it appears that the Applicants had deposited the arrears in the Court. The learned Judge, Small Causes Court had rendered a finding that the Applicants were not defaulters since they regularly paid the rent. If this finding was to be overturned on the ground that the Applicants did not regularly pay the rent, then the learned District Judge, while allowing the appeal ought to have given details regarding deposit and should have given adequate reasons why the Applicants had lost protection of the Rent Act for non-payment of rent.

6 The learned counsel for the Respondents, Mr. Jaydeep Deo,

has sought to rely upon decision of the Division bench of this Court in the case of **Chandiram Dariyanumal Ahuja Vs Akola Zilla Shram Wahtuk Sahakari Sanstha, Akola** reported in *2013(1) Mh.L.J. Page 28*. However, before the law is made applicable, the Appellate Court ought to adjudicate on factual disputes. In view of the insufficiency of reasons in the impugned Judgment and Order, it was put to Mr.Deo whether the Respondents would be agreeable to remand the matter to the District Court Pune, instead of keeping the matter pending in this Court for hearing. Mr.Deo, on instructions, submitted that the Respondents are agreeable for remand to the District Court and a time bound schedule may be fixed.

7 Considering the fact that I am inclined to remand the proceedings back to the District Court, it is clarified that the observations made above are only to illustrate the need for remand and the area of possible adjudication that the learned District Judge ought to addressed himself to. None of the observations above are reflection on the merits of the rival contentions.

8 Accordingly, the Civil Revision Application is allowed. The impugned Judgment and Decree dated 29 September 2014 passed by the Extra Joint Ad-hoc District Judge Pune, in Civil Appeal No.574 of 2010 is quashed and set aside. Civil Appeal No.574 of 2010 filed by the Respondents stands restored to file. The parties shall remain present before the District Court on 29 April 2015

wherein the learned District Judge, will give further directions. The learned District Judge, Pune will give priority to the disposal of the appeal and dispose of the same preferably by 31 December 2015.

(N.M.Jamdar, J.)