

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 118 OF 2015

1. Leelabai w/o Amritlal Jain
Age: 55 years Occu: House-hold,
R/o. Surana Apartment, Sabji Mandi,
Aurangpura, Aurangabad
2. Sandeep s/o Amrit Jain
Age: 41 years, Occu. Business
R/o. As above.
3. Rakesh s/o Amrit Jain
Age: 35 years, Occu: Business,
R/o. As above.

... APPLICANTS
(Original Defendants)

VERSUS

Devidas Eknath Zite
Age: 55 years, Occu: Business,
R/o. Naaz Galli, Aurangabad

...RESPONDENT
(Original Plaintiff)

.....
Mr. P. F. Patni, Advocate for applicants
Mr. V. I. Thole, Advocate for respondent
.....

CORAM : SUNIL P. DESHMUKH, J.

DATE : FEBRUARY 22, 2016

ORAL JUDGMENT :

1. Rule. Rule returnable forthwith and heard finally, with consent.

2. The tenants - original defendants are in revision against judgment and decree dated 09-01-2015 in regular civil appeal No.

3 of 2011 passed by Principal District Judge, Aurangabad, confirming the judgment and decree dated 12-11-2010 in rent suit bearing No. 36 of 2008 passed by 7th Joint civil judge, junior division, Aurangabad, granting decree of eviction against the applicants and directing them to deliver vacant possession of suit property i.e. shop premises to the respondent – original plaintiff. (Hereinafter, parties are referred to by their status before trial court)

3. It is undisputed position that the suit premises are owned by the family of plaintiff, indisputably a joint family. Initially, suit premises were let out by father of plaintiff to father of defendants on rent of Rs. 300/- per month, way back around 1981. With the passage of time, there had been growth in the family members of the plaintiff consisting of three brothers, their wives and children. It is also undisputed position that suit premises are placed in the business area and that the other premises do not have any opening in the business area.

4. The Rent Suit bearing No. 36 of 2008 was instituted by plaintiff, contending that the family of the plaintiff had been growing i.e. the three brothers and their children who were taking education. Their father had been doing private service which was not fetching sufficient income. Father of plaintiff died in 2000. Some time after death of father of plaintiff, defendants' father also

expired and according to learned counsel for the defendants, immediately suit for eviction had been filed against the defendants by the plaintiff.

5. Plaintiff had contended as aforesaid and had further pointed out that his elder brother, namely, Bandu had been seeking employment on daily wages and two other brothers in order to meet the family expenses had started business of betel leaf shop (herein after '*Pan Shop*'). The *pan* shop had not been fetching sufficient income to meet the family needs and it was thus thought that it requires expansion of business to earn livelihood for the family and in the circumstances, the suit had been instituted.

6. The defendants had contested the suit and had resisted the claim of the plaintiff. The defendants have deposited arrears of rent claimed. The defendants had contended that the plaintiff is running a goldsmith workshop which earns sufficient income. Said workshop is in the very same building premises wherein suit shop is located. According to defendants, the plaintiff had approached the defendants demanding increase in rate of rent, but the demand had been far in excess and beyond the capacity of defendants to comply with, they could not accede to the same. According to them, the suit cannot be said to have been filed for a need which can be said to be reasonable and *bonafide*.

7. Parties having went to the court with aforesaid pleadings, necessary issues were framed, with regard to *bonafide* need of the landlord, about arrears of rent, non joinder of necessary parties and about comparative hardship.

8. The trial court on facts considered that the family of the plaintiff had grown and that the income being generated from the business, may not meet the needs of the family on growth. Said position, in the trial court, had not been seriously put to challenge by the defendants. The trial court also adverted to that suit premises are located in area where businesses are flourishing. The trial court further considered that the plaintiff had made it amply clear that he wanted to expand the business activities in order to secure livelihood to the family and that two brothers, namely, plaintiff and Kailas were running *pan* shop not in the building where the suit shop is located but, in the abutting area. Learned Judge also further considered that it was the choice of the plaintiff to have the certain premises owned by family and that landlord is the best judge of his needs. The trial court also considered contention on behalf of the defendants. Having regard to the circumstances and that all the business premises are required by the plaintiff for his family and that there are lot of opportunities of any business fetching sufficient income having regard to the location of the suit premises, the court decreed the suit.

9. The appellate court after taking stock of the situation and referring to various citations had considered that it is not necessary that the plaintiff should show dire and absolute need and that the court should not doubt reasonableness and his *bonafide* requirement. The court also with reference to certain citations relied on, on behalf of plaintiff, considered that he is the best judge of his reasonable and *bonafide* need and it should be left to plaintiff's subjective choice and the court would not be able to foist upon choice on the plaintiff.

10. The appellate court had further referred to a decision in the case of *Abdul Rahiman Noormohammed Daruwalle Vs Sanabai Sahebrao Bhilare* reported in 2010 (6) *Mh.L.J.* 106, wherein it has been observed thus;

“While deciding the bonafide and reasonable requirement of the landlord on the ground of starting the business, it can not be the subject matter of dispute between landlord and tenant as to what is the said business which landlord intends to start and mentioning of such business activity is only incidental and not the core of need which is to be considered while deciding the ground of bonafide and reasonable requirement”.

11. The appellate court on facts considered that the need of the plaintiff, though contested by defendants, appears to be reasonable, genuine and *bonafide*, for, the contention of the defendants in that respect has not been sustainable, observing that the two vacant shops as claimed by the defendants are smaller in

size and those are not located on the western main street of Kasari Bazar, though the same, as contended by defendants, may form part of the building where the suit shop is located.

12. The appellate court, as such, elaborately considered the facts and further considered that meanwhile the defendants had acquired some other premises in business area in the Aurangabad city and as such, taking note of all the aspects, considered that the plaintiff is likely to face greater hardship than the defendants. In view of the same, the appellate court had also accorded approval to the decision by the trial court and concurred with its finding that the plaintiff needs the suit premises reasonably and bonafidely and as such confirmed the eviction decree against defendants.

13. Learned counsel Mr. Patni vehemently submits that when it has come on record that the plaintiff had been running *pan* shop which normally is small in size, partial decree could have been granted in respect of suit premises considering need of the landlord. He further submits that the plaintiff himself has joined government services and as such, it cannot be said that the need of the plaintiff continues, much less, that the need is reasonable and *bonafide*. He submits that in the face of that two other shop premises are available for the family of the plaintiff and in one of the same, plaintiff has been carrying on business of goldsmith the business can be suitably and profitably run by him in said

shops. He submits that even otherwise the plaintiff has not given any particulars of the exact area required for doing business.

14. He referred to and relied on a decision by Hon'ble Single Judge of this Court in case of *Kumawat Co-operative Credit Society Ltd. Vs. Sambhaji Gurappa Kapashe* reported in 2004(4) ALL M R 234. Perusal of said decision shows that the facts involved in said matter are wide apart from the facts involved in the present case. It was a case relating to recovery of possession by landlord on the ground of *bonafide* requirement and the landlord was found to be claiming more portion than the need expressed by him and no particulars of specific area had been given and further that during pendency of the proceedings the landlord had acquired another property closer to the suit premises. In fact, it is a case which would have no bearing on the facts of the present case. In the present case, it appears that the suit premises are located in main business area, whereas two other shops as contended by defendants may be part of the building where the suit premises are situated, however, do not appear to be facing main business area. In the circumstances, the citation being relied on may not carry the case forward for the defendants.

15. Learned counsel Mr. Patni further refers to and relies on case of *Natwarlal Dahyabhai Shah (D) thr. L.Rs. Vs. Smt. Jadaobai w/o. Mishrilal Lalwani (D) thr. L.Rs.* reported in 2014(6) ALL MR 610. That was also a

case wherein tenant appears to have lost in both the courts. However, in peculiar facts of the case, learned Single Judge of the High Court had overturned both the decisions and allowed writ petition by tenant. In the present matter, in contrast, plaintiff has been able to show need of the family and bonafide requirement of the suit premises. Said finding given by the trial court and appellate court, having regard to the facts and circumstances involved in the matter and evidence as has come on record and appreciated by the courts can seldom be faulted with and termed to be perverse to overturn the finding in revisional jurisdiction of this court. Having regard to overbearing position of law and that the plaintiff has been able to show reasonableness of need of his family and bonafide requirement of suit premises, said finding coupled with the findings given by the courts about comparative hardship, does not require interference.

16. The civil revision application as such, stands dismissed and disposed of. Rule stands discharged.

17. At this stage, learned counsel Mr. Thole for the plaintiff refers to order dated 19-11-2015 whereunder this court had directed defendants to deposit Rs. 18,000/- in the executing court and had further directed them to deposit a sum of Rs.600/- per month in the execution proceedings as and by way of damages.

18. Learned counsel Mr. Patni, does not contest much on withdrawal by plaintiff of the amount deposited by defendants, however, requests for continuation of interim relief for a further period of eight weeks. As such, interim relief, so operating to continue for a further period of eight weeks.

(SUNIL P. DESHMUKH, J.)

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