

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

CIVIL REVISION APPLICATION NO. 115 OF 2015

Farokh Adarji Fanibanda,
Since deceased through his
Legal Heirs and Representatives.

1. Meera Farokh Fanibanda,
Age: 73 years, Occu. Household,
R/o : 212, Navi Peth, Jalgaon.
2. Sau. Monaj Adil Daruwala,
Age: 47 years, occu. Household,
R/o : Surat, Tq. & District Surat,
(Gujrath).
3. Pinky Ajay Khandare,
Age : 45 years, Occu. Household,
R/o : Khandesh Mill Compound,
Jalgaon.
4. Cyrus alias Sayrag Farokh Fanibanda,
Age : 36 years, Occu. Travel Agency,
R/o : 212 Navi Peth, Jalgaon.

...APPLICANTS
(Ori. Plaintiffs)

versus

1. Jeetendrakumar S/o Shantilal Kamdar,
Age: 65 years, Occu. Business,
R/o 212, Navi Peth, Jalgaon.
2. Smt. Roshanbai Kekashru Mehta.
3. Perin Homi Mukadam

... (**Dead**)

... (**Dead**)
...RESPONDENTS
(Ori. Defendants)

.....
Mr. L.V. Sangeet, Advocate for applicants.
Mr. S.P. Shah, Advocate for respondent No. 1
Respondents No. 2 and 3 are dead.
.....

CORAM : SUNIL P. DESHMUKH, J.

DATED : 1st FEBRUARY, 2016.

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard learned counsel for parties finally, by consent.

2. The applicants - legal heirs of original plaintiff aggrieved by judgment and order dated 29-01-2015 in regular civil appeal no. 233 of 2005 passed by Principal District Judge, Jalgaon, confirming the judgment and decree dated 06-08-2005 and judgment dated 14-10-2014 in regular civil suit no. 96 of 2004 passed by 3rd Joint Civil Judge, Junior Division, Jalgaon, dismissing their claim for vacant possession of the rented premises by evicting the tenant, are before this court.

3. Undisputed facts in the suit are that, the suit property bearing Municipal House No. 212 situated at Navipeth, Jalgaon, belong to plaintiffs and shop *admeasuring* 10 X 20 feet and a godown *admeasuring* 10 X 20 feet adjacent to shop had been given on hire by him to defendant No. 1 on rent of Rs. 200/- per month. Defendant No. 1 has been occupying the same since 19 years. The rent, in the interregnum, appears to have been increased to Rs. 1000/- per month.

4. Regular civil suit no. 96 of 2004 had been instituted by original plaintiff (now deceased) claiming that as it would be difficult for him and his son to eke out existence, the suit premises are required by original plaintiff and his family members for running the business.

Eviction of the respondents - defendants from the suit premises would not cause any hardship to them. Upon request by original plaintiff, the defendants - respondents had refused to accede to the same and as such, cause of action arose.

5. Upon the pleadings, issues had been framed by the trial court that, whether possession of the suit premises was required by the plaintiffs *bonafide* and reasonably, to whom greater hardship would be caused in the event of granting the decree or by refusal of it, whether termination of the tenancy by the plaintiffs is valid and about entitlement of the plaintiffs for possession of the suit premises and trial court answered in the negative issues about *bonafide* and reasonable requirement by the plaintiffs, finding that defendants would face greater hardship, holding in the negative, that tenancy had been validly terminated and also the entitlement of the plaintiff's possession.

6. Upon appreciation of evidence, particularly, that the plaintiff after having stepped into witness-box, accepted in cross-examination the position that his son had already been running the business in the name and styled as "*Bobby Travels and bobby communications*" in the separate premises belonging to him.

7. Upon aforesaid, the trial court had considered there was no *bonafide* need of the suit premises for the plaintiff himself.

8. With reference to decision in the case of *Abdul Samad Makhadum Bakesh Shaikh Vs. Sudha Akant Parakhe* reported in 1982 Mh.L.J. 647, it was considered by the trial court, no credible material in respect of the need

for starting the business has been placed on record by the plaintiff. The court further went on to distinguish the case cited *supra*.

9. So far as greater hardship is concerned, the trial court found that plaintiff's son was running business in two separate shops and in absence of evidence with regard to other premises available to defendants, it was considered that the defendants would suffer greater hardship. So far as this matter is concerned, it appears that plaintiff had undergone some amendments with respect to acquisition of alternate accommodation by defendant No. 1. Upon evidence, it appears to have been found that original plaintiff has not been able to establish defendant No. 1 to have acquired suitable premises for business and that the premises acquired in the name of his son and wife are insufficient.

10. In the regular civil appeal, appellate court had also framed points for determination, particularly, with regard to *bonafide* and reasonable requirement of the plaintiff and about greater hardship to the parties. The appellate court also considered quite a few citations relied on, on behalf of the plaintiff and distinguished the same. On the basis of material and appreciation of evidence, the appellate court confirmed the findings recorded by the trial court and, as such, the appeal had been dismissed.

11. In revision before this court, learned counsel Mr. L.V. Sangeet for the applicants – legal heirs of original plaintiff vehemently submits that finding with reference to accommodation by son, cannot be said to be

proper, for, son is about to suffer by decree in respect of premises occupied by him, wherein he is running business in the name and styled as "*Bobby Travels and bobby communications*". Learned counsel fairly refers to that original plaintiff is no more, however, he has not been able to substantiate his contention that the premises occupied by his son wherein "*Bobby Travels and bobby communications*" business is being run is owned by other person or for that matter such contention had been taken at proper stage. So far as present proceedings are concerned, this submission does not appear to have any nexus with pleadings of the parties upto the stage of appeal.

12. Having regard to the concurrent findings of fact recorded by the courts below, it cannot be said that those are in absence of any material or for that matter without reference to any pleadings. This is not a case wherein matter calls to invoke revisional jurisdiction of this court.

13. In the circumstances, civil revision application is not being entertained and stands rejected. Rule stands discharged.

14. This judgment, however, would not be an impediment for owners of the suit premises to make approach for eviction, if grounds for the same are available or as and when those arise.

Sd/-

(SUNIL P. DESHMUKH, J.)