

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

CIVIL REVISION APPLICATION NO. 83 OF 2010

Madhukar S/o Kishanrao Wattamwar

Age : 65 Yrs., Occ. Business,

R/o : Parbhani, Tal. & Dist.

Parbhani.

..... APPLICANT/

[ORI. DEFENDANT]

V E R S U S

Mohd. Ashraf S/o Haji Shakur

Age : 60 Yrs., Occ. Business,

R/o : Ambedkar Road,

Kapad Market, Parbhani,

Tq. & Dist. Parbhani.

..... RESPONDENT/

[ORI. PLAINTIFF]

.....

Mr. P.S.Paranjape, Advocate for applicant.

Mr. Gajanan Kadam, Advocate for Respondent.

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CORAM : T.V.NALAWADE, J.

DATE OF JUDGMENT : 08/08/2016

JUDGMENT :

1. The Revision Application is filed against the Judgment and Decree of eviction proceeding which was

given No. 87/RC/0/21 by the Rent Controller appointed under the Hyderabad Rent Act and also against the Judgment and decree of Rent Appeal No. 1/2009 which was pending in the District Court, Parbhani. The Suit filed by the present respondent/landlord for eviction on the ground of bonafide requirement for personal use u/s 15 of the Hyderabad Rent Act is decided in his favour. Heard Both sides.

2. In short the facts leading to the institution of the proceeding can be stated as follows.

The respondent is the owner of house No. 90 which consists of 4 shops situated on the ground floor which are marked as A,B,C and D in the map annexed with the petition filed before the Rent Controller. On the first floor of this building, there is some constructed portion which is being used by the respondent/landlord for residence and as his go-down.

3. It is the case of the present respondent that he is doing business of cloth in the shop marked as A. It is contended that adjacent to shop A, there is shop B which is given on monthly rent of Rs. 200/- to the

defendant/present applicant. It is contended that shop marked as C is in possession of one Sudhakar and shop marked as D is in possession of Mohd. Younus and they were inducted as tenants almost in the same year i.e. in the year 1968 when defendant was inducted as tenant in shop marked as B.

4. It is the case of the plaintiff that initially he was not in need of more premises considering the nature and extent of the business and so he had given 3 shops on rent basis to present defendant and other 2 tenants. It is contended that from the year 1970, his business flourished and turn over of his business went on increasing. It is contended that in the year 1968-69 the price of the cloth purchased was around ₹ 1.43 Lakh, it went up to ₹ 28 Lakh in the year 1985-86 and then the actual sale of goods was of ₹ 29 Lakh. It is contended that due to the increase in the business, he needs more space and so he is in need of 3 shops marked as B,C and D. He contended that he has taken steps against all the tenants for eviction on the ground of bonafide requirement and he had informed the present applicant also about his need by notice given on 13/10/1986 and

31/10/1986. It is the case of landlord that he had informed the tenant that his right to continue as tenant was terminated and he needs to hand over the possession, but he avoided to hand over the possession. The Suit came to be filed on 17/10/1987.

5. Defendant filed Written Statement and contested the matter. He admitted the relationship. He admitted that aforesaid 4 shops are owned by the plaintiff and he is running cloth business in shop A and there are 3 tenants in the shops B,C and D. He denied that the plaintiff needs shop B for expansion of his business and he denied that the business of the plaintiff of cloth has increased many times since 1968-69. It is contended that the portion in possession of the plaintiff/landlord is 4 times bigger than the portion of the defendant. He contended that the plaintiff is rich person and he owns many properties in Parbhani and so his claim is not bonafide. The defendant took defence that in the past similar Suit was filed by the plaintiff and it was dismissed though for default. The defendant contended that the plaintiff wants to run the business with his sister and probably for that business he wants the suit premises.

6. On the basis of aforesaid pleadings, issues were framed by the Rent Controller. Both sides gave evidence. On the basis of the evidence, Rent Controller has given finding that the plaintiff has proved his case about bonafide requirement of the suit premises for personal use and finding is given that the defendant failed to prove that greater hardship will be caused to him if eviction order is made against him.

7. The first appellate Court has confirmed the aforesaid findings given by the Rent Controller and specific points were formulated on the ground of bonafide requirement and on the issue of greater hardship. In this proceeding, only these points were argued.

8. During arguments, learned counsel for the applicant/tenant submitted that during the pendency of the proceeding in the Courts below, the landlord got possession of remaining 2 shops and so it can not be said that he still requires the suit premises for personal use. Even if this submission is accepted as it is, that can not change the fate of the matter. Admittedly, the landlord

had taken action against 3 tenants by filing Suits on the same ground and if the other 2 tenants compromised the matter and surrendered possession to the landlord, this circumstance can not be used to say that now the landlord is having sufficient space for expansion of his business.

9. The pleadings from Written Statement already quoted show that the tenant feels that for starting business, though new with the sister, the plaintiff needs the suit premises. In the evidence of the parties, it is brought on record that under 2 names, the plaintiff is doing business in shop marked as A in the map. The defendant has admitted that his business has also increased though he has avoided to admit that the business of the landlord has increased many times. In the cross examination of the plaintiff, it is brought on record that the plaintiff has appointed as many as 25 employees in his shop. This single circumstance is sufficient to infer that the business of landlord has increased and he requires more space. There is oral evidence to substantiate the case of bonafide requirement for personal use and documents of turn over submitted to the

income tax office by the plaintiff are produced, which is consistent with the case of the plaintiff.

10. The defendant took defence that the plaintiff is having more property in Parbhani, but he did not produce any record to prove such case. The plaintiff has not admitted that he owns other properties also in Parbhani.

11. The pleadings in Written Statement and the oral evidence of the defendant does not show that he made any attempt to find out alternate accommodation for shifting his business to that place. It is not his case that he can not afford to spend more on rent and he can not get similar accommodation in that locality. Such pleadings and evidence was necessary to show that greater hardship will be caused to the respondent if decree of eviction is given. The respondent has given evasive answers with regard to the case of the plaintiff that he is in need of the suit premises for expansion of his business.

12. There are more circumstances on which

some argument was advanced. Learned counsel for the respondent submitted that in the past Suit for eviction was filed on the same ground but it was withdrawn and so the present Suit is not tenable. This point is dealt with by the Courts below. The Suit was not decided on merit. The claim is on the ground of bonafide requirement for personal use and so such Suit is tenable.

13. Learned counsel for the applicant placed reliance on some cases reported as (1977) 1 SCC – 451. [Purushottam Das Vs. The VIII Additional District and Sessions Judge, Allahabad & Ors.], 2003 (1) SCR – 329. [Badrinarayan Chunilal Bhutada Vs. Govindram Ramgopal Mundada], Case decided by High Court of Madras [Madurai Bench] in C.R.P. (MD) No. 2094 of 2013 (NPD) and M.P. (MD) Nos. 1 to 2013 & 1 of 2014 decided on 10/10/2014 and Civil Revision application No. 244 of 2007 decided on 14/12/2009 by this Court [CORAM : R.K.Deshpande, J.].

14. The facts and circumstances of each and every case is always different.

15. Learned counsel for the landlord/respondent also placed reliance on the cases reported as 2007 (3) ALD 69 (SC) [Julieta Antonieta Tarcato Vs. Suleiman Ismail], 2007 (3) ALL MR – 534 [Sara Rauf and Joe Shera Rauf Vs. Durgashankar Ganeshlal Shroff (D) through L.Rs.] and Civil Revision Application No. 786 of 1989 decided on 28/08/2003 by this Court [CORAM : A.B.Naik,J.].

16. It is already observed that each and every case needs to be decided on the basis of the facts of that case. In the present matter, the landlord came with specific case that he wants the suit premises for expansion of his existing business and he has proved this case. The findings of the Courts below on this fact are consistent and they are in favour of the landlord. The respondent has failed to prove that greater hardship will be caused to him if decree of eviction is given against him. In view of these circumstances, there was no alternative before the Courts below than to give the decree of eviction. Considering the limited scope of this proceeding, this Court holds that it is not possible to interfere in the decision given by the Courts below.

17. In the result, Civil Revision Application stands dismissed.

18. At this stage, learned counsel for the applicant seeks time as he wants to challenge the decision of this Court. Four weeks time from today is given to the applicant to vacate the suit premises.

[T.V.NALAWADE, J.]