

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

Civil Revision Application No.193 of 2014

Ranjana w/o. Natwarlal Shaha
Since deceased through legal
representatives.

.. Petitioners.

Versus

Tansuklal Ratanlal Sanghavi.

.. Respondent.

Shri. Subodh P. Shah, Advocate, for appellant.

Shri. R.F. Totala, Advocate, for respondent.

CORAM: T.V. NALAWADE, J.

DATE : 10th AUGUST 2016

ORDER:

1) Revision is filed against the judgment and decree of Regular Civil Appeal No.250/2003 which was pending in District Court Jalgaon. The appeal filed by the present petitioners against the judgment and decree of rent suit bearing Regular Civil Suit No.154/1996 which was pending in the Court of the 2nd Joint Civil Judge Junior Division Jalgaon is dismissed by the District Court. Decree of possession is given in favour of the present

respondent, landlord under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act on the ground of bona fide requirement for personal use. Heard both the sides.

2) The suit was filed in respect of the ground floor of property bearing CTS No.2070 situated at Navi Peth Jalgaon which is House No.54 in the record of the local body of Jalgaon. One-half portion of the CTS No.2070 was purchased by the plaintiff under sale deed dated 10-8-1993 from previous owner and the suit came to be filed in the year 1996.

3) Defendant Smt. Ranjana is the daughter of original tenant Smt. Shantabai. Shantabai was in possession of the ground floor consisting of three rooms on monthly rent of Rs.15/-. After the death of Shantabai, defendant started living there with her family. It is the case of the plaintiff that defendant has 2 sons and they have purchased their own house having all amenities in the same locality of Jalgaon and since then the suit property is not in use of Ranjana and her sons. It is the

case of the plaintiff that he has been living in rented premises and he is in need of the suit property for both living there and for doing business. It is his case that on 1-4-1996 he had requested the defendant to hand over the possession but the defendant refused to do so and so cause of action took place for the suit. The suit was filed on other grounds like non user and availability of alternate accommodation etc. But the suit is decreed only on the ground of bona fide requirement.

4) Defendant filed written statement and contested the matter. She admitted that her mother was in possession as tenant of the suit property on monthly rent of Rs.15/-. She admitted that after the death of mother, she came in possession and she was living there with her husband, two sons namely Sudhir and Samir and also three daughters. She admits that her daughters are married and both the sons are married. She admitted that after the marriage her sons Sudhir and Samir left the suit property as they purchased house in the same locality in the year 1992. She contended that the said property is their self acquired property and they are living there. She

denied that the said property was purchased by her also. She denied that she is not residing in the suit house.

5) The defendant contended that the plaintiff is a rich person and he has purchased two acres land at Bambhori and there plaintiff has made construction of factory and building for residence. She contended that plaintiff is doing business of eatables at Bambhori. She contended that the first floor of the house bearing No.54 is in possession of the plaintiff but he is not using that portion and he is not in need of the suit property for personal use.

6) On the basis of the aforesaid pleadings issues were framed. Both, plaintiff and defendant gave evidence which is as per the aforesaid pleadings. Plaintiff has given particulars of his rented premises by giving evidence that he is living in "Ramesh Sadan" and he has been paying monthly rent of Rs.500/-. He has produced rent receipt in respect of that property in the suit. He has denied that he owns any other property than the aforesaid suit property. He has given evidence that he is doing service and as he is

required to pay rent from the income of his service, hardship will be caused to him if the suit property is not given in his possession. He has given evidence that, the defendant is living with her sons in the property purchased by them in the same locality.

7) In the cross examination it is brought on the record that on each floor of this house there are two rooms and some verandah portion. In the evidence of defendant it is brought on record that on the second floor one Bhandale is living as tenant. It was suggested to the plaintiff in the cross-examination that one Bansilal Bothra is occupying the first floor. He has specifically deposed that since year 1994 his son Devendra and family of Devendra are living on the first floor. He has admitted that his son has purchased some property where he has made construction of factory and some construction for residential purpose. He has specifically denied that nobody is living on the second floor and he denied that he is living with his son in the aforesaid construction made by his son. The record is produced to show that one Ashok was living on the first floor and his name was entered in

the voters list of 1993.

8) In rebuttal, defendant gave evidence that plaintiff and his son are living at the place where he has made construction of factory and residential premises. She has shown ignorance as to whether the plaintiff is living in rented premises in Ramesh Sadan and is paying monthly rent of Rs.500/-.

9) As the plaintiff has come with the case that he wants to live there and he also wants to do some business, cross examination of defendant was made in that regard. She has admitted that her father was living in the suit property and he was doing business of tea powder also in the suit property.

10) The evidence of the defendant in the cross examination shows that the defendant and her sons have one ration card. Her evidence shows that after receiving information from plaintiff about his requirement she did not make search for securing other accommodation. The evidence of the defendant and her witness shows that

there is no record with them to show that the property at other place was purchased by the plaintiff. On the other hand the evidence has created probability that the property belongs to the son of the plaintiff. Son of the defendant, namely, Samir has given evidence and his evidence shows that they have purchased house property in the same area and he has no objection if his mother, defendant lives with him. He however gave evidence that property is purchased by him and not by the defendant. He is paying income tax and it can be said that his financial condition is sound. The defendant is retired government servant and she is receiving pension.

11) Learned counsel for the petitioner mainly submitted that the particulars of the *bona fide* requirements were not given and the contentions were very vague. He placed reliance on some observation of this Court made in the case reported as **1982 Mh.L.J. 647 (Abdul Samad v. Sudha Akant)**. The facts of the said reported case were altogether different. In the present case plaintiff has come with specific case that he is living in rented premises, he is required to pay Rs.500/- per

month and so he wants to live in the suit property and he wants to do some business there. He has given evidence that there is no other property. Thus, there is necessary pleadings with regard to *bona fide* requirements. The contention that he is living in rented premises and so he requires the suit premises is itself sufficient description of *bona fide* requirement. Learned counsel for the petitioners placed reliance on a case reported as **2005(1) Mh.L.J. 35 (Sitaram Narayan Shinde v. Ibrahim Ismail Rais)**. In that case also pleadings regarding *bona fide* requirement were vague and not sufficient and so facts were different.

12) On aforesaid point, learned counsel for respondent placed reliance on the case reported as **(1998) 8 SCC 119 (Sarla Ahuja v. United India Insurance Company Ltd.)**. In that case even when landlord was living at other station it was held that landlord was in need of the suit property. Every case needs to be decided on the facts and circumstances of that case. In the present matter there are aforesaid circumstances.

13) There is one more development and that is defendant died during pendency of the suit and the appeal was filed and prosecuted by her legal representatives including two sons. The aforesaid discussion shows that sons have purchased property and they were living there. The daughters are married and are living with their respective spouses. In view of these circumstances it can be said that no hardship would have been caused to the tenant or the successors of the tenant. The aforesaid material was considered by the Courts below. Considering the scope of the present revision this Court holds that it is not possible to interfere in the decision given by the Courts below. In the result, the revision stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

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