

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

**CIVIL REVISION APPLICATION NO. 171 OF 2015**

Chandumal s/o Hiralal Agrawal ..... **APPLICANT**

**V E R S U S**

Krushnaprasad s/o Motilal Devidan ..... **RESPONDENT**

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Mr. S.P.Shah, Advocate for Applicant.

Mr. A.S.Bajaj, Advocate for Respondent.

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**CORAM : T.V.NALAWADE, J.**

**DATE : 18<sup>th</sup> MARCH, 2016**

**ORDER :-**

. The Revision is filed against the Judgment and Decree of R.C.S. No. 179/2011, which was pending in the Court of the Civil Judge [Jr. Division], Jalna and also against the Judgment and Decree of R.C.A. No. 2/2014, which was pending in the Court of the District Judge, Jalna. Both sides are heard.

2. The Suit was filed by the respondent Krushnaprasad under the provisions of the Maharashtra Rent Control Act, 1999 for possession of 2 shop premises bearing Nos. 1-10-99 and 1-10-100 which are part of CTS No. 772 situated at Dana Bazar, Jalna. The total

area of the 2 shops is 13.5 Sq. Mtrs. The plaintiff is the owner of these 2 shops and it is his case that they were given on monthly rent of ₹ 200/- for each shop to the defendant.

3. The Suit was filed for eviction on various grounds viz. making permanent alterations in the shops, on the ground of default and on the ground of bonafide requirement for personal use.

4. The defendant contested the matter by filing Written Statement. He denied the contentions made in respect of all the 3 grounds. He contended that the plaintiff is having other shop premises where he can start his business which he wants to start. He contended that greater hardship will be caused to him if order of eviction is made as he has no shop in Jalna city.

5. Issues were framed in respect of all the 3 grounds and both sides gave evidence. The trial Court held that the ground of bonafide requirement of the premises for personal use is made out. The Suit was dismissed in respect of other 2 grounds. The first appellate Court has confirmed this decree.

6. The learned counsel for the plaintiff/respondent took this Court through the evidence given by both the sides and he submitted that the evidence on record shows that prior to the date of Suit, area of 1000 Sq.Ft. was sold by the landlord, though it

was situated at other place and this circumstance was sufficient to infer that the requirement was not bonafide. He submitted that there is material to show that the plaintiff owns 5 shops, out of which 2 shops are given on lease to other person and one shop is with the son of the plaintiff and so it can not be said that the plaintiff bonafidely needs the suit premises. It was submitted that in view of the age of the plaintiff, which is more than 85 years, it can not be said that the plaintiff really wants to do some business and he bonafidely requires the suit property for starting some business. Learned counsel submitted that there is admission given by the plaintiff that he is occupying the premises in Nathani Complex. It was submitted that there also the plaintiff can start his business. However, no record is produced to show that the said premises is given for business purpose, as shop to the plaintiff. On the contrary, it is admitted that in that premises the plaintiff is residing.

7. On the other hand, learned counsel for the respondent drew attention to the material showing that the defendant has premises in market yard and so it can not be said that there is no premises with the defendant to do the business. The submissions made show that the defendant is selling Jaggery on retail basis in the suit premises. In the market yard premises also, the defendant is doing the same business, but no record of nature of business which defendant is doing in the premises occupied in market yard area is produced.

8. The substantive evidence of the plaintiff is as per his aforesaid contentions. He wants to start General Store in the suit premises and according to him as he has no other premises in that area, he wants the possession of the suit premises. He has given evidence that orally he had requested the defendant on many occasions to give the possession, but the defendant did not give any response. As the Suit was filed under other grounds like the ground of default also, notice of termination of relationship was given by the plaintiff to the defendant in April, 2010. The cross examination of the plaintiff shows that he admits that he is the owner of 4 shop premises like shop Nos. 1-10-90, 1-10-91, 1-10-99 and 1-10-100. He has given evidence that shop No. 1-10-95 belongs to his son Kamalkishor and he has no concern with that shop. There his son is doing cutlery business and he has given evidence that prior to 15-20 years, the said shop was transferred in the name of his son.

9. In the cross examination of the plaintiff, it is brought on record that in the locality where the shop premises is situated, there are many shops. He has admitted that one property bearing No. 11375 was owned by his family and he was the owner of 107 Sq. Mtrs. This property, however was sold by him. No evidence that there was construction on the property sold. No record is produced to show that the plaintiff can do business in any other place or he has any other shop where he can start the business. The evidence of the defendant, which is given in rebuttal, does not show that

he made any attempt to get the shop premises in that area or other area after getting the notice from the plaintiff. He tried to say that 2 shop premises of the plaintiff are in closed condition and third shop is with him but there is no such pleading in the Written Statement and no evidence is given to prove that the plaintiff is in possession of such shops. His evidence in the cross examination shows that he tried to avoid to disclose the relevant information. He deposed that he does not know as to whether the space where the plaintiff is living, is taken on rent basis by the plaintiff. In the evidence of plaintiff, it is brought on record that in the locality where the suit premises is situated, there are many shops. Defendant has not given substantive evidence to the effect that no shop premises is available on rent basis in that locality. It is his specific admission that there is other premises available with him in the compound of market yard and the property is given to him for the period of 30 years on lease basis. The said record was produced though not proved by the defendant. It can be said from the document which was produced by the defendant that the area of the said shop is 53.82 Sq.Mtrs.

10. The learned counsel for the applicant placed reliance on reported case viz. 1994 (1) Bombay C.R. - 568 [Sidramappa Mutyappa Mengane, since deceased Thr. Legal heirs Vs. M/s Mahadev Tammanna Bagdure]. In this case, this Court has discussed the circumstances which need to be considered by the Court

and the circumstance is that the other property is available with the landlord. There can not be any dispute over this proposition. In the case reported as (2001) 8 Supreme Court Cases – 718 [ Kempaiah Vs. Lingaiah & Ors.], the Apex Court has laid down that the requirement of the landlord must be more than his mere wish or impulse or desire, there must be element of necessity and the requirement must be reasonable and bonafide. There can not be any dispute over this proposition. The facts and circumstances of each and every case are always different and in the present case it can not be said that the landlord who had crossed 80 years of age, does not really want to start business. If a person of this age wants to do the business and to have separate source of income, he can not be denied of such opportunity if he owns such premises. Admittedly, he was doing the business in the past and his son is also in the business. Similar observations are made by the Apex Court in the case reported as (1999) 7 Supreme Court Cases – 275 [T.Sivasubramaniam & Ors. Vs. Kasinath Pujari & Ors.].

11. Reliance was placed by the learned counsel for the applicant on the case reported as 2009 (1) Mah.L.J. - 740 [Daulatrao Madhawrao Bagal (since deceased) by his L.Rs. Vs. Sonabai Dinkar Hundekar (since deceased) Thr. his L.Rs.] [Bombay High Court]. In this case, burden to prove with regard to the hardship is discussed and it is laid down that it is the duty of the respondent to make an attempt to find out alternate

accommodation as soon as he is informed about the requirement of the premises by the landlord. Admittedly, such attempt was not made by the defendant/tenant at any point of time. So, these observations can be used against the petitioner.

12. Alternatively, learned counsel for the applicant/tenant submitted that partial eviction is possible and out of the 2 shops, one shop premises can be given to the plaintiff/landlord. On this point he placed reliance on 2 cases reported as 2010 (2) Bom.C.R. - 63. [Bismilla Bee Sk. Chand & Anr. Vs. Mohd. Anwar Mohd. Akhtar] [Aurangabad Bench] and 2011 (3) Mh.L.J. - 336 [Mishrilal Ramjivan Sarda, since deceased Thr. L.Rs. Satyanarayan Mishrilal Sarda & Anr. Vs. Sidaramappa Kashinath Lingshetti]. The facts and circumstances of each and every case are always different. In the present case, the total area of 2 shops is around 13.5 Sq.Mtrs. The plaintiff wants to start General Store. In view of these circumstances, it is not possible to consider the case of partial eviction. The area is not that sufficient and it is clear that somebody will be helping the plaintiff in doing the business considering his age. Thus, the observations made by this High Court in the aforesaid 2 cases, can not help the applicant to get the protection in respect of part of the suit premises. If size of premises is small, the request of partial eviction can not be considered.

13. The learned counsel for the

respondent/landlord placed reliance on the cases reported as AIR 2014 Supreme Court – 3708 [Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh] and AIR 1973 Supreme Court – 76 [The Managing Director (MIG) Hindustan Aeronautics Ltd. Balanagar, Hyderabad and Anr. (In both the Appeals) Vs. Ajit Prasad Tarway, Managar (Purchase and Stores) Hindustan Aeronautics Ltd. Balanagar, Hyderabad and Anr. (In both the Appeals)]. In these cases, the Apex Court has discussed the scope of revision filed against the decision given under Rent Control Act, which has become final. There can not be any dispute over the proposition. In the present matter, aforesaid material is considered by the trial Court and the first appellate Court also. Both the Courts below have come to the conclusion that the requirement of the landlord is bonafide and the relief is given. In view of the material available in the present matter and the scope of revision, this Court holds that it is not possible to interfere in the decision given by the Courts below.

14. In the result, Civil Revision application stands dismissed.

15. At this stage, learned counsel for the applicant first requested for stay to the execution of eviction decree. He wants to challenge the decision of this Court. In view of the age of the landlord and the circumstance that the Suit was filed on 15/04/2011 and the decree of eviction was given against the petitioner on

11/07/2014, this Court holds that such stay is not possible.

Then learned counsel for the applicant submitted that some time can be given to hand over the possession to the landlord. For the same reason, this Court holds that more complications can not be created by giving time, as it is seen that if the time is granted, indirectly stay is obtained to the execution of the decree. So, no such relief is given.

**[T.V.NALAWADE, J.]**