

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

CIVIL REVISION APPLICATION NO. 6 OF 2010

- 1) Parbhani Taluka Sahakari Kharedi
Vikri Sangh Ltd., New Mondha,
Parbhani, District Parbhani, through
it's President
- 2) Parbhani Taluka Sahakari Kharedi
Vikri Sangh Ltd., New Mondha,
Parbhani, District Parbhani, through
it's Manager:

Dilip s/o Ambadasrao Deshmukh,
Age : 46 years, occup. Service,
R/o New Mondha, Parbhani

.. Petitioners/orig.
Defendants No.
1 and 2

VERSUS

- 1) M/s Rajaram Sitaram Zarkar Firm,
Through it's Partner,
[Satish Vasant Zarkar,
Age 56 years, occup. Business,
R/o Parbhani, Dist. Parbhani,
Komti Galli, Parbhani]

- 2) Venkatesh Krishi Kendra,
Through its Proprietor,
Dnyaneshwar s/o Anandrao Harale,
Age 48 years, occup. : Business,
R/o New Mondha, Parbhani,
District : Parbhani

.. Respondents/Resp.
No. 1 orig. Plaintiff,
Resp. No.2 original
Defendant No. 3.

Mr. Arvind S. Deshmukh, Advocate for petitioners
Mr. S. M. Kulkarni, Advocate i/b Ms. Smita M. Zarkar, Advocate
for respondent no.1

CORAM : SUNIL P. DESHMUKH, J.
DATE : 16th August, 2016

ORAL JUDGMENT :

1. Heard learned counsel for the parties.
2. It is original defendants no. 1 and 2's revision against judgment and decree dated 24-08-2009 passed by District Judge-3, Parbhani, in regular civil appeal no. 141 of 2006 preferred at their instance taking exception to the judgment and decree passed by Civil Judge, Senior Division, Parbhani, allowing special civil suit no. 18 of 2002 dated 26-09-2006 filed by present respondent no. 1.
3. Special civil suit no. 18 of 2002 had been instituted by respondent no.1 – plaintiff seeking eviction of petitioners-original defendants no. 1 and 2 from the godown and certain rooms, the property more particularly described in the plaint on various grounds, inter alia, subletting, bonafide requirement of suit premises for reasonable use of the landlord and default in payment of rent.
4. Plaintiff is a registered partnership firm carrying on business in the name and style 'Rajaram Sitaram Zarkar Firm' at Parbhani. Petitioners-original defendants no. 1 and 2 are a co-

operative society registered under the Maharashtra Co-operative Societies, Act, 1960. Defendant no.3-respondent no. 3 herein is claimed to be a person to whom defendants no.1 and 2 are alleged to have sublet a portion of suit property.

5. Upon hearing learned counsel Mr. A. S. Deshmukh appearing for petitioners, and learned advocate Mr. S. M. Kulkarni for respondent no.1, the situation appears to be largely confined to three grounds for eviction referred to hereinabove, namely, subletting, bonafide requirement of the landlord and default in payment of rent. The two courts have concurrently held that suit property is required bonafide by the landlord, there has been commission of default in payment of rent and as such, a decree for eviction has been passed albeit the appellate court has reversed the finding recorded by trial court over the issue of subletting, and held that it may not be said that the landlords had been able to prove subletting.

6. Learned counsel Mr. Deshmukh submits that eviction granted on the ground of bonafide requirement is untenable, for, it cannot be said that a concomitant issue of comparative hardship stands decided by the two courts. He submits that it does not appear to be a case wherein it can be said that the issue of comparative hardship had been properly dealt with.

7. The other leg of submissions of Mr. Deshmukh, as far as default is concerned, is that his clients are willing to pay all the arrears subsisting as on the date and as such, having regard to the intention underlying section 15 of the Maharashtra Rent Control Act, the ground of default may be wiped out, if payment is allowed to be made.

8. Mr. Deshmukh purports to support his submissions, citing two judgments viz. *Badrinarayan Chunilal Bhutada vs. Govindram Ramgopal Mundada*, reported in *AIR 2003 SC 2713* and *Namdeo Laxman Nawale vs. Chandrasen Khasiram Rajeshirke*, reported in *2001 (2) Mh. L.J.*

9. Referring to Badrinarayan's case (*supra*), he submits that mere wish or desire of landlord to acquire possession over tenanted premises would not be a bonafide and reasonable requirement. It is the degree of his necessity that would be significant to judge comparative hardship that would be suffered by the parties to the proceedings. He submits that it is the case of petitioners that respondents no. 1 and 2 had other alternate property available and as such, degree of necessity would not be as much high as to judge comparative hardship in their favour. The citation further shows that the burden is on tenant to be discharged on the issue of comparative hardship.

10. The other citation in the case of *Namdeo Nawale vs. Chandrasent Rajeshirke* has been pressed into service to contend that in the present case since evidence has been led by filing affidavit, it cannot be accepted as a matter of course and that permission to lead evidence accordingly would not be granted mechanically.

11. Mr. Kulkarni, on the other hand submits that as far as default committed by the petitioners is concerned, the same is habitual. He purports to point out the position as had been subsisting as on the date of instituting suit, while total arrears of past three years were ₹ 25,200/- whereas petitioners had purportedly paid only ₹ 15,000/-. Even during pendency of suit, no regular payment of rent had ever been tendered as required. He further states that even the mandate under order dated 29-09-2010 passed by this court about making of payment has not been adhered to at all. In the circumstances, he submits having regard to the conduct of the petitioners, the object underlying section 15 of the Maharashtra Rent Control Act, gets frustrated although learned advocate Mr. Deshmukh submits that some payments have been intermittently made. Mr. Kulkarni submits that such payments are not sufficient and would not take away efficacy of the ground accrued for eviction. He submits that both the courts have on evidence come to concurrent conclusion that

tenants are defaulters and as such are liable to be evicted on that ground. He contends that the finding so recorded by the two courts, have not been demonstrated to be either perverse or incorrect in any way. He, therefore, purports to submit that under revisional powers of this court such a finding need not be dabbled with in meddlesome way.

12. Mr. Kulkarni submits that although learned counsel Mr. Deshmukh for applicants relies on the judgment of learned single judge of this court in the case of Namdeo Laxman Nawale (*supra*), yet the fact remains in present matter that the evidence as has been taken is allowed under the amended provisions of the law, particularly after 2002 and further points out that upon such an affidavit of evidence, the plaintiff and its' witnesses have been cross examined by defendants-present petitioners. He, therefore, submits that the petitioners are estopped from taking such a plea and ground now in the revision.

13. Mr. Kulkarni further submits that respondent no.1-plaintiff has amply brought on record that the suit premises are required by landlord bonafide for carrying on business and said evidence has not at all been rebutted by the tenants-petitioners. He submits, as far as comparative hardship is concerned, it is a fact which can be stated to be borne out from the record that the

petitioners are not at all occupying and using suit premises. He further points out that it is neither pleaded nor any evidence is adduced about that the tenants-petitioners would suffer more hardship than the landlord. In the face of such a situation, according to him, eviction decree granted by two courts on this ground as well, is not liable to be interfered with.

14. Upon hearing learned counsel for parties and perusal of the judgments and decrees of the two courts, it is not at all the case of the tenants-petitioners that they would be able to demonstrate that they have paid the amount of arrears of rent at the rate of ₹ 700/- per month hitherto as is required under the provisions of section 15 of the Maharashtra Rent Control Act. The record amply bears out that out of total dues of ₹ 25,200/- of the past three years of notice demanding arrears of rent and termination of tenancy, petitioners had tendered only an amount of Rs.15,000/- under a cheque. It further emerges that they had even thereafter defaulted in regular payment and tender of rent during the proceedings before the courts. It also emerges that even this court's order dated 28-09-2010 has not been complied with. As such, it would be highly improper under the revisional powers of this court while there is a concurrent finding of fact about defaults having been committed, giving right to landlord according to section 15 of the Maharashtra

Rent Control Act, and to disregard the conduct of the tenants in committing continual and habitual defaults and accept the rent sought to be now tendered, and to undo the findings on fact and consequences flowing from the same.

15. As far as bonafide requirement of suit premises is concerned, there is sufficient indication in the judgments of the two courts that said ground has been considered after appreciating relevant aspects involved and it has been found by the courts that the landlord requires the premises bonafide. On the whole, it appears that pleas in defence being taken by the petitioners-tenants have been vague and have not at all been supported by any material evidence. It appears that both the courts have, to quite a large extent, considered the comparative hardship involved in the matter. As a matter of fact, point in respect of the same had been framed and considered with finding that neither there is any pleading nor any material or evidence adduced by petitioners about them suffering more hardship in the event of eviction. In such a case, citation referred to by the petitioners would not further the interest of respondent-plaintiff under which it is considered that burden is on tenant to prove that tenant would suffer more hardship than the landlord and such a burden in present matter, tenant has not discharged.

16. In view of aforesaid, this does not appear to be a matter wherein the concurrent decisions by the two courts can be faulted with on the basis of contentions raised by the petitioners.

17. Civil revision application as such is dismissed.

SUNIL P. DESHMUKH,
JUDGE

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