

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

CIVIL REVISION APPLICATION NO. 7 OF 2016

1. Sau. Manoramabai Kisan Kutrelu
(died during pendency of appeal
on 20-01-2013)
2. Shailendra s/o Kisan Kutrelu
R/o H. No. 825, Pensionpura,
Cantonment, Aurangabad
3. Ygendra s/o Kisan Kutrelu,
Age 38 years, occup. Service,
R/o H. No. 825, Pensionpura,
Cantonment, Aurangabad
4. Mahindra s/o Kisan Kutrelu,
(died during pendency of appeal .. Petitioners/
on 20-09-2011, to that effect original
pursis was filed) defendants

versus

Abdul Hakeem Abdul Rahim,
Age: 62 years, occup. Ex-
serviceman, r/o Gadiguddam, .. Respondent/
Cantonment, Aurangabad orig. Plaintiff

Mr. Ajeet D. Kasliwal, Advocate for petitioners
Mr. M. N. Deshmukh, Advocate for respondent

CORAM : SUNIL P. DESHMUKH, J.
DATE : 22nd August, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith.
2. Heard learned counsel for parties by consent, finally.
3. This tenants-defendants' revision purports to take exception to concurrent judgments and orders passed by trial and the appellate court. The proceedings were initiated by respondent, instituting rent suit against petitioners bearing no. 39 of 2008 pursuant to provisions of the Maharashtra Rent Control Act, 1999 for eviction of tenants-defendants, *inter alia*, on the ground of default and bonafide requirement of the respondent-landlord-plaintiff. The trial court had decreed the suit under judgment and order dated 18-12-2012 and the appellate court had dismissed appeal therefrom at the instance of present petitioners bearing rent appeal no. 1 of 2013. [Hereinafter, parties would be referred to by their original status in the suit proceedings viz; petitioners as defendants and respondent as plaintiff].
4. Plaintiff had instituted rent suit bearing no. 39 of 2008 seeking eviction of defendants from the suit premises,

contending that the defendants had committed defaults in making payment of rent for the period 01-07-1993 to 01-04-2008 to the tune of ₹ 17,800/- which was due and payable by them to the plaintiff. Plaintiff had issued legal notice for recovery of rent, however, defendants did not reply and have failed and neglected to pay the amount of arrears of rent. The plaintiff, however, limited the claim for arrears for three years immediately preceding institution of suit, i.e. Rs. 3,600/-.

5. The plaintiff is an ex-serviceman and had not been having any residential accommodation of his own, save the suit premises. He has two sons and two daughters and the accommodation where the plaintiff had been staying had been congested for residence of his family. The plaintiff is an old person. His wife is also old and as such both of them suffer age related problems. Plaintiff's sons wanted to get married.

6. The suit premises, however, were in dilapidated condition and notice accordingly had been issued by cantonment board to defendants who were occupying the same. Said notice had been subject-matter of challenge at the instance of defendants in regular civil suit no. 980 of 1993 which was dismissed. Regular civil appeal no. 41 of 1996 carried therefrom was also dismissed. Even second appeal therefrom before this court had been

dismissed. Plaintiff accordingly sought possession of suit premises under present suit i.e. rent suit no. 39 of 2008.

7. Defendants resisted the suit, contending that earlier on, eviction proceedings had been initiated under the Hyderabad Rent Control Act as had been applicable to this area then wherein contention had been taken that father of the defendants had been tenant. Those proceedings came to be subsequently withdrawn. The arrears demanded were denied by defendants. It was contended that the rent amount tendered was not being accepted by the plaintiff entailing remittance of the same by money orders. The plaintiff had refused to accept the money orders. They had denied that the suit house had become dilapidated. They had replied the notice by plaintiff. It was contended that the house bearing no. 599 consisting of eight rooms constructed in re-inforced cement concrete was available and sufficient for the plaintiff and his family members. They denied that suit premises were *bonafide* and reasonably required by plaintiff and his family and contended that greater hardship would be caused to defendants in case decree of eviction is passed in favour of the plaintiff.

8. With reference to aforesaid, relevant issues with regard to defaults in payment of rent as well as *bonafide* requirement and

comparative hardship were framed by the trial court. The court after taking into account cases pleaded by parties and evidence as had been adduced had given findings that the defendants had fallen in arrears of rent and are defaulters and that the suit premises were required *bonafide* and for reasonable use by plaintiff and his family members and further that plaintiff would suffer more hardship if eviction decree is not passed in his favour.

9. Learned counsel Mr. Kasliwal appearing for petitioners-defendants contends that looking at the evidence adduced, it cannot be said that any of the issues can be said to have been proved by the plaintiff. For that purpose, he purports to point out that arrears of ₹ 3,600/- claimed in the suit had been duly paid on 02-04-2009 and as such, it cannot be said that the ground of default is available for eviction. It is contended that plaintiff has alternate accommodation available in the shape of house no. 599. He contends that the two pleas, bonafide requirement and suit premises being in dilapidated condition, may not be able to co-exist, for, it is highly improbable that in such premises a person who really requires the premises, would be able to reside. He, therefore, submits that said two pleas are inconsistent and this position has not been taken into account by both the courts and as such, the suit ought to have failed and

ought to have been dismissed. However, both the courts have committed grave error in not appreciating this aspect intrinsically involved in the matter. He, under the circumstances, submits that the judgments and decrees of both the courts are liable to be set aside and suit should be dismissed.

10. Countering aforesaid submissions, learned counsel Mr. M. N. Deshmukh appearing for plaintiff submits that both the courts have concurrently held that there is default in fact and in law and that the suit premises have been required bonafide by plaintiff having regard to the number of members of his family and that the premises presently occupied by plaintiff is rented premises. The findings given by trial court about bonafide requirement and also about comparative hardship have been properly given and have been confirmed by the appellate court. He submits that the defendants have not made any move so far, for seeking alternate accommodation for themselves. He submits, however, in the face of situation where the tenanted premises are owned by the plaintiff and is being required by him *bonafide* for reasonable use, the hardship as is rightly adjudged by the two courts would be suffered more by plaintiff is not amenable for reconsideration in revision by this court. The findings are given on issues based on evidence and appreciation of the same has been done by the courts at two stages. Such

findings cannot be said to be perverse requiring interference under the revisional powers of this court.

11. Learned counsel Mr. Deshmukh goes on to submit that even with regard to the default in payment of rent, rent cannot be said to have been deposited according to provisions of the Maharashtra Rent Control Act. He submits that submission on behalf of other side about plaintiff having accommodation of eight rooms has not been substantiated by any material evidence at all. In such a position, present revision is not a proceeding wherein any indulgence can be given to the defendants while the plaintiff is in dire need of the suit premises having regard to members in his family and with the passage of time the need has become even more severe. He, therefore, requests for dismissal of revision.

12. Having heard learned counsel and on perusal of judgments delivered by two courts, one more aspect that emerges is that as required under section 15 of the Maharashtra Rent Control Act, the defendants do not appear to have continued to pay rent regularly after institution of suit and during pendency of the proceedings. It also emerges that the position about the plaintiff and his wife being age-old persons and having four children is not disputed albeit it is the

contention of the defendants that the plaintiff had some other premises under his ownership, however, the same is not borne out from the evidence save and except a statement by defendants. In the circumstances, the findings with regard to bonafide requirement and reasonable use of suit premises by the plaintiff and his family members does not appear to be a finding which can be said to be out of evidence in order to cause interference in the same.

13. The trial court has considered, evidence shows that for marriage of his son, the plaintiff requires suit property; it is in dilapidated condition, a fact which has been sustained till this court. The landlord has proved his bonafide need and the choice of accommodation is for the landlord to make. The genuine need of the landlord gets corroborated in cross examination of defence witness.

14. The appellate court has observed that there is no evidence on record that house no. 599 as contended by tenant consists of eight rooms. The landlord is the best judge of his requirement. The landlord and his wife are old aged persons having two sons and they wanted their sons to marry. Their family size is increasing. The appellate court has further observed that the defendant has not stated that he had searched for alternate

accommodation and considered that there is no evidence on behalf of defendants about their sincere and honest efforts to seek alternate accommodation and has recorded that defendants have failed to prove that greater hardship would be caused to them. Further, the appellate court has observed that the tenants-defendants are economically well placed referring to their earning per month and further that there is an admission to the effect that on good rental, premises would be available.

15. The two courts, as has already been stated above, have adjudged that while it comes to comparative hardship between the plaintiff and the defendants, it is the plaintiff who would suffer more hardship and appears to be in genuine requirement of the suit premises whereas it does not appear to be a case that it can be said that the defendants would not be able to have other premises or had ever tried to have an alternative for the suit premises.

16. As has been ruled by the supreme court in the case of *Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta*, reported in (1999) 6 SCC 222, after taking into account pressing need and other attending circumstances, the judgments given by the two courts in present matter on comparative hardship would hardly be amenable to a corrective action in the revisional proceedings.

17. In the face of aforesaid situation, this cannot be said to be a case wherein indulgence can be given to the defendants.

18. Civil revision application as such is dismissed. Rule stands discharged.

19. At this stage, learned counsel Mr. A. D. Kasliwal, on instructions, seeks one indulgence in the least that sufficient time be given to the defendants to vacate suit premises for handing it over to the plaintiff.

20. Mr. M. N. Deshmukh, learned counsel for plaintiff resists. However, looking at that the defendants have been residing in suit premises since 1993, I deem it appropriate to grant six months time for vacating suit premises and handing over the same without any obstruction, hindrance and creation of third party interest in the same to the plaintiff and in the meanwhile the defendants to pay compensation for such occupation at the same rate at which rent had been hitherto paid. Defendants shall file undertaking before this court within a period of eight weeks from today to the effect that they shall not create any third party interest in respect of suit property nor shall they cause obstruction or hindrance in delivering peaceful and vacant possession of suit premises to the plaintiff immediately on completion of six months period and that handing over such

possession to the plaintiff is the responsibility of the defendants. It shall further be undertaken that in the meanwhile till handing over of possession of suit premises to the plaintiff, defendants would keep on paying compensation to the plaintiff for occupation of suit premises at the same rate at which rent was being paid by them to the plaintiff at the time of institution of the proceedings.

21. In case of failure to abide by aforesaid stipulations to be incorporated in the undertaking, it would be open to the plaintiff to proceed with the execution.

SUNIL P. DESHMUKH,
JUDGE

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