

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 212 OF 2014

Shaikh Zaffar Abid Mohd. Hussain

....Appellant.

Versus

Syed Moinuddin alias Mohd. Miya
and Anr.

....Respondents.

Mr. R.N. Dhorde, Senior Counsel i/b. Mr. V.R. Dhorde, Advocate
for appellant.

Mr. V.J. Dixit, Senior Counsel i/b. Mr. S.V. Dixit, Advocate for
respondent Nos. 1 and 2.

CORAM : T.V. NALAWADE, J.

DATED : 6th April, 2016.

ORDER :

1. The proceeding is filed to challenge the judgment and decree of Rent Suit No. 27/2008, which was pending in the Court of Civil Judge, Junior Division, Aurangabad and also the judgment and decree of Rent Appeal No. 5/2011, which was pending in the Court of Principal District Judge, Aurangabad. The suit filed by respondents, landlords for eviction under the provisions of Maharashtra Rent Control Act on the ground of bonafide requirement is decided in favour of landlords. Heard learned Senior Counsels Shri. Dhorde and Shri. Dixit.

2. The suit was filed by the landlords Moinuddin and his daughter Mrs. Fakhri in respect of one shop premises having size of 15 ft. x 18 ft. which is part of C.T.S. No. 9823 from Dargah Hazrat Shah Nizamuddin Aliya Road, Aurangabad. The shop is given No. 15 and the boundaries of the shop are given by the plaintiffs. On monthly rent of Rs. 450/- the property was given to the defendant.

3. It is the case of plaintiffs that they want to start business in retail as well as wholesale of selling of Tea of different companies in the suit premises. It is their case that considering the location of the property, this property is most suitable for such business. It is their case that they have no other alternate accommodation for doing such business. It is the case of plaintiffs that they had asked the defendant to hand over the possession as they wanted to use the shop for starting business, but the defendant refused to hand over the possession, so cause of action took place. This ground is made available under section 16 (1) (g) of the Maharashtra Rent Control Act.

4. The defendant filed written statement and contested the matter. The defendant contended that he is occupying the

suit premises since 1980. It is the case of defendant that shop No. 14 was also in his possession as tenant and he was paying monthly rent of Rs. 150/- in the beginning. It is contended that the rent was increased by the landlords to make it Rs. 300/- per month and then Rs. 450/- per month, but that rent, defendant has paid regularly.

5. It is the case of defendant that he is running the business of Electroplating and Buffing work in the suit shop and that business is being done since 1980 and he has acquired goodwill in respect of this business. It is his case that income made by him from that business is the only source of livelihood for himself and his family members. It is his case that if eviction order is made against him, hardship will be caused to him and to his family members.

6. It is the case of defendant that plaintiffs are having several shops in the same locality and they are owners of more than 50 shops. It is contended that out of the 50 shops, 3 shops are in actual possession of plaintiffs and in the 3 shops, there are businesses of plaintiffs run under the names and styles as (i) 'Indian Handlooms' (size of the shop 45' x 30') (ii) Raja Farm House and (iii) Raja Auto Engineering Works.

7. It is the case of defendant that plaintiffs are having 13 shops in the building known as 'Nizamiya Market'. It is the case of defendant that adjacent to aforesaid 'Indian Handloom Shop', plaintiffs own 9 more shops. It is contended that all the shops except aforesaid 3 shops are given by the plaintiffs on rent basis to different tenants and so, there need is not bonafide. It is the case of defendant that he has no other shop except aforesaid shop Nos. 14 and 15. It is contended that plaintiffs had asked to give rent at increased rate of Rs. 1500/- per month and when defendant refused to do so, the suit is filed for eviction.

8. On the basis of aforesaid pleadings issues were framed. Both the sides gave evidence. The evidence of plaintiff No. 1 is in accordance with the aforesaid pleadings. In the cross examination of the plaintiff, suggestions were given to the plaintiff by the counsel of defendant as per the defences taken in the written statement. The plaintiff admitted that he owns land Gat Nos. 9824, 9836, 9837, 9838 and 9839. He admits that he owns 20 to 22 shops and they are given on rent basis. He has given evidence that he has filed one more proceeding for eviction against other tenant. He denied in the cross examination that aforesaid three businesses like 'Indian

Handloom', 'Raja Farm House' and 'Raja Auto Engineering Works' belong to his son-in-law. In written statement, different contention was made in that regard by the tenant. In the cross examination, it is brought on the record that till the date of suit, he had not done any business and even plaintiff No. 2 had not done any business.

9. Examination-in-chief of the defendant is as per the aforesaid contentions made in the written statement. His evidence shows that he is in possession of 2 shops like shop Nos. 14 and 15, belonging to plaintiffs and two different businesses are being done in the 2 shops. From the evidence, it can be gathered that he is making good income from these two businesses. In the cross examination, he has admitted that since 2008 he is in possession of 3 more shops other than shop Nos. 14 and 15. He has admitted that shop Nos. 6 and 7 of one Razakki are in his possession and they are situated at property No. 3-8-42. He has admitted that in shop Nos. 6 and 7, he is doing welding business and he is making profit in the business.

10. In the cross examination, defendant has admitted that 13 shops from 'Nizamiya Market' are of Charminar Backers. He has admitted that there is office of M.S.E.B. in the property

No. 4-10-72. He could not give particulars of the licence in respect of the aforesaid three businesses which are referred in the written statement as businesses of plaintiffs.

11. Some record like property card of C.T.S. Nos. 9822, 9823, 9824, 9836, 9837, 9838, 9839 and 9840 was produced before the Trial Court. This record shows that the names of both the plaintiffs are entered in the property cards of these properties as owners. In some record, other owners are also shown like Smt. Nayyar Jahan Begum, Shri. Yaya Moiyoddin etc.

12. It was necessary for the defendant to show that plaintiffs were having shop premises in their possession where they can start the business of Tea in retail and wholesale. It is brought on the record in the cross examination that till the date of suit plaintiffs were not doing any business and further, suggestion was given to plaintiff in the cross examination that the 3 businesses mentioned in the written statement were of son-in-law of plaintiff. This suggestion is, however, denied. There is no record whatsoever with the defendant to prove that the plaintiffs were doing the business of any kind or they were in possession of some shops situated in the same locality where they can start the business of Tea. On the other hand, defendant

gave admission that in addition to aforesaid 2 shops, defendant was having 3 shops on lease basis with him. In view of these circumstances, both the Courts below held that landlords are entitled to decree of eviction on the ground of bonafide requirement for personal use.

13. The learned Senior Counsel for tenant submitted in the present proceeding that after decision of the suit (dt. 9.2.2011) the plaintiffs got decree in respect of shop No. 14 also and present appellant, defendant suffered eviction decree in respect of 2 other shops like shop Nos. 6 and 7 which were taken from other landlord from other place. The learned Senior Counsel for petitioner submitted that these circumstances need to be considered as they are relevant while deciding the present proceeding.

14. Present suit came to be decided on 9.2.2011. It appears that another suit filed by present respondents, landlords for eviction in respect of shop No. 14 came to be decided on 22.9.2011. But the ground taken is different, sub-lease. The said decision was challenged by filing Rent Appeal No. 16/2011 and the appeal is also dismissed. It can be said that if the tenant, appellant was thinking that due to decision given against him in

the other matter on 22.9.2011 he was entitled to raise additional ground in Rent Suit No. 27/2008 or in Rent Appeal filed against the decision of Rent Suit No. 27/2008, then present appellant ought to have taken proper steps in that regard. It can be said that even when Rent Appeal was pending against the decision of Rent Suit No. 27/2008, till 20.9.2014 no application for amendment of written statement was made in Appeal No. 5/2011 and no permission was sought to lead additional evidence in Rent Appeal. Similarly, the other so called circumstance that the present appellant suffered decree in respect of shop No. 6 and 7 was not brought on the record in Appeal No. 5/2011. First time in the present matter, the learned Senior Counsel for tenant submitted that these circumstances need to be considered.

15. Firstly, the aforesaid circumstances were not brought on the record of the eviction proceeding which was in existence as Rent Appeal No. 5/2011 and so, there is no question of considering these circumstances in the present matter. Secondly, after bringing those circumstances on the record, it was necessary for the Court to ascertain as to whether the said circumstances have really changed the things and the landlords were no more in need of present suit premises for starting

business. It appears that against the decision given in the Rent Appeal, which was filed in respect of other property, shop No.14 some proceeding is filed by present appellant, tenant and that proceeding is still pending. In any case, the said suit was filed on other ground like subletting by the tenant, appellant and so, in any case, if the landlords succeed in that matter, landlords will be entitled to get the possession of said shop. Whether he is able to get that shop under that ground is a different matter, but this circumstance could have been considered in the matter like present one as present appellant was such tenant that he was having 5 shops and he had sublet one shop for making money. Such point can definitely be considered to decided the point of comparative hardship. In any case, that stage was not reached and so, in the present matter, in revision, considering the scope of revision, such submission cannot be considered.

16. The learned counsel for appellant placed reliance on following reported cases :-

(i) AIR 1981 SUPREME COURT 1711 [Hasmat Rai and Anr. Vs. Raghunath Prasad],

(ii) AIR 1992 SUPREME COURT 700 [Ramesh Kumar Vs. Kesho Ram],

(iii) (1998) 9 Supreme Court Cases 585 [Maqboolunnisa Vs. Mohd. Saleha Quaraishi],

(iv) 2005 (1) ALL MR 556 [Solapur Taluka Khadi Gramodyog Utpadak Sahakari Society Vs. Dattatraya Shankarrao Kondewar & Ors.],

(v) (2009) 10 Supreme Court Cases 197 [Jai Prakash Gupta (Dead) through L.Rs. Vs. Riyaz Ahamad and Anr.].

Most of the cases are on the ground of change in circumstances during pendency of litigation. The learned counsel for respondents placed reliance on following reported cases.

(i) 2005 (2) Mh.L.J. 800 [Dinesh Balkrishna Dande Vs. Somani Radio Corporation, Amravati and Ors.],

(ii) 2014 (6) Mh.L.J. 563 [Nana Kisanrao Thokade since deceased through his L.Rs. Vs. Prabhakar Ambadas Gosavi],

(iii) (2003) 1 Supreme Court Cases 462 [Akhileshwar Kumar and Ors. Vs. Mustaqim and Ors.],

(iv) 2009 (3) Mh.L.J. 694 [Madhukar Punjaram Sonawane and Anr. Vs. Gajanan Vithal Khandekar],

(v) 2009 (2) Mh.L.J. 225 [Sharadabai Anandrao Durgule Vs. Ramchandra Manku Pol since deceased through L.Rs. and ors.],

(vi) (2001) 2 Supreme Court Cases 604 [Gaya Prasad Vs. Pradeep Srivastava],

(vii) (2004) 8 Supreme Court Cases 490 [Pratap Rai Tanwani and Anr. Vs. Uttam Chand and Anr.],

(viii) AIR 2003 SUPREME COURT 632 [Ram Nibas Gagar (Dead) by L.Rs. Vs. Debojyoti Das and Ors.]

The aforesaid cases are on the point of deciding the issue of

bonafide requirement. This point is considered by the Courts below and they have given the finding that the landlords have proved that they bonafidely require the suit premises for starting the business. Entire material is considered by the Courts below in that regard and it cannot be said that the Courts below have committed error in deciding the issue or there is illegality in the decision.

17. From the observations made by the Apex Court in the cases cited by both the sides, it can be said that firstly the change in circumstance need to be proved by taking aforesaid steps and then the Court is required to give finding that due to change in circumstance, the requirement of landlord has totally eclipsed. There was no question of giving such finding as steps were not taken by the tenant to bring on the record the change in circumstance. This Court holds that considering the scope of the revision, it is not possible to interfere in the decision given by the Courts below.

18. In the result, revision stands dismissed. Time of five weeks is given to the appellant, tenant to vacate the suit premises.

[T.V. NALAWADE, J.]

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