

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.717 OF 2015
WITH
CIVIL APPLICATION NO.15997 OF 2015

- | | |
|---|------------|
| 1. Anilkumar Ramkumar Soni
Age – 42 years, Occ – Businesses
R/o Vazirabad, Nanded | APPELLANTS |
| 2. Ramkumar s/o Bishanlal Soni,
Age – 62 years, Occ – Businesses
R/o Vazirabad, Nanded | |
| 3. Govinkumar s/o Ramkumar Soni,
Age – 37 years, Occ – Businesses
R/o Vazirabad, Nanded | |

VERSUS

Avinash Kishanrao Deshmukh Age – 75 years, Occ – Agriculture & Business, R/o Vazirabad, Nanded	RESPONDENT
--	------------

.....

Mr. Mayur G. Deokate, Advocate for the appellants Mr. S. V. Kurundkar, Advocate for the respondent	
---	--

.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 4th FEBRUARY, 2016

ORAL JUDGMENT :

1. This is second appeal by unsuccessful appellants-defendants who had been sued by the respondent-plaintiff for recovery of possession of suit property - a shop situated at Vazirabad, Nanded bearing Municipal No.2-12-537 in CTS

No.16250. [Parties hereto are hereinafter referred to by their status in the suit].

2. Primary contention of the defendants is that they had been sued by the plaintiff seeking their eviction from the suit premises on the ground that he requires suit premises *bonafide* and that the defendants are in unauthorized occupation and as such, had claimed damages for occupation of the suit premises from the defendants @ Rs.3000/- per month.

3. The defendants had denied the contentions of the plaintiff stating that they are tenants in their own right and that the property had been in possession of members of joint family as descendants of original defendant - Inderchand and further that at the time of institution of the suit, the rent was being paid @ Rs.250/- per month to the landlord by the defendants which was being accepted by him. They referred to that initially the rent amount had been @ Rs.50/- per month, which was increased to Rs.100/- and then further to Rs.250/-. It was contended by them in their joint written statement that suit premises are not required by the plaintiff *bonafide* for, there are two shops beside the suit premises, which are vacant (empty) and that three sons of the plaintiff are doing their businesses. Son of the

plaintiff Bhushan, is running business in a shop at Baba Nagar in Nanded City. Besides that there are two shops occupied by other tenants close to the suit premises. In the circumstances, it cannot be said that the need of the plaintiff is *bonafide*.

4. Upon pleadings, the trial court had framed issues as to whether the plaintiff has proved that defendants No.1 to 3 are in unauthorized occupation of the suit shop ? Whether the defendants have proved that they are tenants of the plaintiff ? Whether the plaintiff proves that he needs suit shop *bonafide* ? Whether the plaintiff is entitled for recovery of vacant possession and Whether the plaintiff is entitled for the amount of damages ?

5. With reference to the evidence as has emerged on record, the trial court considered that initially suit premises were let out by original owner Sakhubai Deshmukh - mother of the plaintiff to Inderchand and Bhishanlal Soni who were running business in the premises and were paying rent @ Rs.50/- per month, which was increased to Rs.100/- and from 1998, when defendant No.1 had been running the shop, the defendants started paying rent @ Rs.250/- per month. The plaintiff had accepted rent from the defendants. The trial court found that as such, there is no substance in the contention of the plaintiff that the defendants

are unauthorizedly occupying the suit premises and as such, considered that question of sub-letting and breach of agreement would not arise. Under the circumstances, the trial court considered that the defendants have been able to show that they are tenants in suit premises.

6. The trial court considered that the plaintiff had three sons Bhushan, Umesh and Dhananjay and with their family stay on the first floor of suit premises. All the three sons of the plaintiff are married. One of his son is running business in the name and style as "Dhanu's Card Gallery" in one of the shops adjacent to suit shop and he wanted to further develop said business and hence needed the suit shop. The plaintiff's other son Bhushan is also running business in the name and style as "Dhanu's Card Gallery" in Babanagar, which is 5 to 6 km away from suit premises. His another son, Umesh, is also running "Dhanu's Card Gallery". All the three sons of the plaintiff, having regard to growing family required the suit premises to meet the needs and the plaintiff required suit premises for them. In the circumstances, the trial court adjudged that the suit premises are required by the plaintiff *bonafide*. The trial court further considered that the defendants had been joint in their business and that they were in possession of a three storied building and

as such, more hardship would cause to the plaintiff than the defendants. The trial court found that it was easier for the defendants to find alternate accommodation at prevailing market rates in the area where the suit shop is situated and since the plaintiff wanted to occupy the suit shop for extension of the business of his sons, greater hardship would cause to the plaintiff than the defendants.

7. The trial court, however, did not accede to the request of the plaintiff with regard to compensation / damages, having regard to Regular Civil Suit earlier on had been filed by the defendants seeking injunction against the plaintiff in which injunction had been granted in favour of the defendants observing that the plaintiff may recover possession of the suit premises by adopting due process of law. In said litigation, the plaintiff had been obligated to institute proper proceedings for recovery of possession and accordingly present proceedings had been initiated.

8. The appellate court also framed points with regard to unauthorized occupation, *bonafide* requirement of the plaintiff and about comparative hardship. The appellate court, with reference to evidence on record and on appreciation, concurred

with the findings given by the trial court and as such, dismissed the appeal. The appellate court additionally found that the defendants are in possession of a three storied building in Nanded city, is closer to the locality where the suit premises are situated, wherein members of joint family of defendants are residing and running business.

9. Mr. Mayur Deokate, learned advocate appearing for the appellants – original defendants vehemently submits that it ought to have been considered by the courts that the respondent – plaintiff had failed to prove his basic allegation that the defendants are in unauthorized occupation, them having proved to be tenants in the suit premises. He further submits that the plaintiff's requirement cannot be termed as *bonafide* for the reason that there are three other vacant shop premises, besides the suit premises, which could have been got occupied by the plaintiff for the purpose for which possession is sought. He submits that there are two other tenants of the plaintiff to whom no notice of eviction had ever been issued. He submits that all the three sons of the plaintiff are running businesses at their respective places of business and as such, it cannot be said that need of the plaintiff is *bonafide*. He further submits that having regard to that as the plaintiff's attempt to have the defendants

ousted failed earlier on, as and by way of reaction and vendetta, suit proceedings have been initiated. He further submits that the suit was not maintainable, for, according to him, having regard to provisions of section 2 of the Maharashtra Rent Control Act, regular suit proceedings were not maintainable and it ought to have been filed as Rent Suit, under the Maharashtra Rent Control Act, 1999 and having not done so specifically, the suit should fail. He purports to rely on a citation in the case of "*M/s Sanyam Realtors Private Limited Vs. Shyamji Bhagirathi Yadav & Another*" reported in 2014 (3) ALL MR 889 which was a case of return of plaint for presentation to proper court. Therein the court, having regard to provisions of the Maharashtra Rent Control Act, considered that the suit is required to be decided by a special court and section 33 of the Maharashtra Rent Control Act prohibits any other court to exercise jurisdiction and having regard to provisions of section 33 of the Maharashtra Rent Control Act, it was considered that city civil court has no jurisdiction to decide the suit. He, therefore, submits that the suit was not tenable at all and such a ground had specifically been taken at the very initial stage and almost it was the first ground taken combating the suit filed by the plaintiff. He, therefore, submits that since it was termed as regular civil suit, a regular civil appeal had been preferred and

had been dealt with accordingly. (However, while we consider the decision given by the appellate court, it does not appear to be a case wherein it can be said that any objection to the tenability of the suit, the form in which it had been filed, had ever been taken in the memo of appeal or appears to have been argued during the hearing of the appeal).

10. On the other hand, Mr. Kurundkar, learned advocate appearing for the respondent – plaintiff supports the decisions rendered by the trial as well as appellate court submitting that may be, the plaintiff has failed to prove the ground of sub-tenancy, however, having proved that the plaintiff required the suit premises *bonafide*, the plaintiff is entitled to recover possession of the suit premises. He submits that eviction of the tenant can be granted on any one ground and it is not necessary to prove all the grounds, which had been pressed for eviction. He further submits that the trial as well as the appellate court have elaborately dealt with the evidence on record. Their appreciation cannot be termed as perverse nor it can be said that it has no nexus with the evidence. He particularly points out that although the defendants have taken up a plea that there are two shops vacant beside the suit shop, the defendants have failed to prove their said case. He further submits that it cannot be denied and

it has not been denied that the suit premises are adjacent to the shop premises wherein the sons of the plaintiff run business of Dhanu's Art Gallery and suit premises are required for extension of said business. He submits that the contention about no notice to other two tenants is not of much relevance, for, eviction of adjoining premises to the shop in which his sons run business has been sought and that the tenant cannot foist a choice on the plaintiff for having a particular shop or for that matter the ground that him being in *bonafide* need of suit premises cannot be said to be without any substance. He further submits that the suit had been filed seeking eviction of the persons in occupation upon the grounds which are referable to the Maharashtra Rent Control Act. The parties as well as the courts have considered the proceedings with reference to the powers of the court under section 33 of the Maharashtra Rent Control Act and further that ground about powers and jurisdiction of the civil court having not been specifically taken, contended, argued and pressed into service, the appellants – defendants are now estopped from taking up such a plea. He submits that even otherwise, the defendants have submitted to the jurisdiction of the court. He goes on to submit that the citation sought to be relied upon on behalf of the appellants – defendants, has no relevance as far as

present matter is concerned. That was a case of return of plaint, having regard to provisions of section 33 of the Maharashtra Rent Control Act. That was a clear case wherein the city civil court cannot be said to have jurisdiction having regard to nature of dispute involved. He, as such, submits that there is no substance in the second appeal and as a matter of fact according to him, the second appeal itself is not tenable having regard to the provisions of section 34 of the Maharashtra Rent Control Act. He, therefore, requests for dismissal of the second appeal.

11. Having regard to aforesaid submissions of the parties and on perusal of the judgments by the trial as well as appellate courts, the position clearly emerges that both the courts have concurrently held that the plaintiff's need is *bonafide*, having taken into account that the plaintiff has three sons, they have already been in business and that they needed suit premises for further development and extension of the business. It has come on record that one of his son has to run a business away from the suit premises in the premises which are not of the plaintiff and it is stated to be in the rented premises. The legal position also appears to be clear on that the land lord has a choice when he can make a choice to seek a particular premises and the tenant cannot foist upon him his desire that he should seek

eviction of tenants of other premises unless need is *bonafide*. It has also come on record and it has been specifically taken into account by both the courts that the defendants have other premises in occupation and that they are having three storied building at Vazirabad and their family members are residing wherein the defendants are running business.

12. Besides that, having regard to the provisions of section 34, challenge is not tenable in the form of second appeal. In the absence of request, this is not a fit case wherein it can be said that the revisional powers of this court could be invoked to overturn the findings of fact arrived at on the evidence before the courts. This is not a case wherein exercise revisional powers of this court can be justified. Second appeal as such, stands dismissed.

13. In view of dismissal of the second appeal, civil application No.15997 of 2015 does not survive and stands disposed of.

[SUNIL P. DESHMUKH, J.]