

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 294 OF 2015**

**M/s. Athanikar & Co. Kolhapur
through Proprietor**

..Petitioner

Vs.

**Smt. Sumitra Bapuso Mahagaonkar
(Desai) (since deceased)
through its Legal heirs & Ors.**

..Respondents

Mr. S.S. Patwardhan a/w Mr. P. K. Patole for the Petitioner

**CORAM : R. M. SAVANT, J.
DATE : 2nd MARCH, 2016**

P.C.

1 The Revisionary Jurisdiction of this court is invoked against the judgment and order dated 29-10-2014 passed by the Learned Ad-hoc District Judge-, Kolhapur, by which order the Appeal filed by the Petitioner came to be dismissed resultantly the order dated 8-3-2004 came to be confirmed.

2 The suit premises is a shop admeasuring 20 x 8 ft. situate at Gujar Road, Kolhapur. The said suit shop is on the ground floor of the structure in question. The Respondents herein are the original Plaintiffs. The Defendant is the tenant in respect of the suit property. The Suit in question being Regular Civil Suit No.1393 of 2001 is founded on the ground of bonafide requirement of the Plaintiff No.1 and her daughter Shraddha Nimbalkar who intend to start a jewellery shop in the said suit shop. It appears that there are

number of jewellery shops on the said Gujar Road, Kolhapur. It was the case of the Plaintiff No.1 that she and her daughter both are widows and are in a sound financial condition and therefore they intend to start the said jewellery business. The Defendant opposes the eviction on the ground of bonafide requirement by questioning the intention of the Plaintiffs to start the jewellery shop. It was the case of the Defendant that he is not in a sound financial condition and that his entire family is dependent on the cloth business which he is carrying out in the suit shop. It was averred by the Defendant that the Plaintiff No.1 is in a sound economic condition and her daughter Shraddha Nimbalkar is employed. It was further averred that she is also getting pension of her husband. It was further averred that the Plaintiffs have lands at other places in Kolhapur District and therefore has the financial capacity to sustain themselves.

3 The Trial Court framed the relevant issues and on the basis of the material on record decreed the Suit. The Trial Court has recorded a finding that the Plaintiff No.1 has proved the bonafide need of herself and her daughter Shraddha who both are widows. The Trial Court did not accept the contention urged on behalf of the Defendant that the Plaintiffs have other shops in the building known as Sumitra ApartmentSs. The Trial Court also did not accept the case of the Defendant that he is not in a economic sound position. This was on the basis of the fact that it was the case of the Defendant

that he has earned goodwill in the business in which he was engaged. The Trial Court therefore after recording the finding in favour of the Plaintiffs in so far as the ground of bonafide requirement is concerned also answered the issue of comparative hardship against the Defendant.

4 The decree passed by the Trial Court dated 8-3-2004 was challenged by the Defendant by filing Regular Civil Appeal No.142 of 2004. The Lower Appellate Court having regard to the material on record as also having regard to the findings recorded by the Trial Court both on the aspect of the bonafide requirement and comparative hardship did not deem it appropriate to interfere with the decree passed by the Trial Court and has accordingly dismissed the Appeal.

5 Hence both the courts below have concurrently held in favour of the Plaintiffs and against the Defendant. In the light of the said concurrent orders passed by the Court below, no case for interference in the Revisionary Jurisdiction of this Court is made out. The Civil Revision Application is accordingly dismissed.

[R.M.SAVANT, J]