

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 242 OF 2015**

Hemlata Subhash Sonar

..Applicant

Vs.

Vasantrao Sitaram Mohite & Anr

..Respondents

Mr. P. K. Patole for the Applicant

Mr. Chetan Patil for the Respondents

CORAM : R. M. SAVANT, J.

DATE : 10th FEBRUARY, 2016

P.C.

1 The Revisionary Jurisdiction of this court is invoked against the judgment and order dated 16-1-2015 passed by the Learned Ad-hoc District Judge-1 Kolhapur, by which, the Appeal filed by the Applicant being Appeal No.222 of 2009, came to be dismissed and resultantly the decree passed by the Trial Court dated 28-8-2009 came to be confirmed. There is therefore a concurrent finding recorded by the Courts below in favour of the Respondents – Landlord in respect of the ground of bonafide requirement.

2 The Suit in question being Regular Civil Suit No.572 of 2007 has been filed for eviction of the Applicant herein from the suit premises which is a shop admeasuring 6 x 4 feet on the ground floor of the property. The eviction of the Application / Defendant was inter-alia sought on the ground of arrears of rent and bonafide requirement. It seems that the ground of arrears of

rent was given up and only the ground of bonafide requirement was pursued with. The Plaintiffs were carrying on business of sale of veterinary medicines in the name and style of Vasant Agro Agencies. The said business is a wholesale business. It was the case of the Plaintiffs that presently the premises in their possession are inadequate as the Plaintiffs cannot have a counter and a place for computers as also there is no place for the customers to stand. It was also the case of the Plaintiffs that the place for stocking the medicines on the first floor is also inadequate and therefore the medicines are also stocked at their residence and whenever there is a demand, a person has to be sent to the residence to bring the said stock of medicines. The Applicant / Defendant who is running a business of selling utensils, countered the case of the Plaintiffs by contending that the Plaintiffs are owners of two other premises situated in CTS No.610 and 610 B and therefore on the said basis it was sought to be contended that the requirement of the Plaintiffs cannot be said to be reasonable and bonafide.

3 The Trial Court adjudicated upon the Suit and by its order dated 28-9-2009 decreed the same. The Trial Court held that the case of the Plaintiffs that the premises present in their occupation are inadequate as the counter cannot be installed as well the computers cannot be kept, has to be accepted in the light of the oral evidence of the Plaintiffs as well as the Defendant. The Trial Court in so far as the availability of the premises in D Ward i.e. CTS

No.610 and 610 B are concerned held that the said premises being residential premises cannot be taken into consideration. The Trial Court accordingly held that need of the Plaintiffs is reasonable and bonafide and that the Plaintiffs are desirous to have additional premises to carry on their business in view of the fact that the present premises are inadequate. In so far as hardship is concerned, the Trial Court held that since the Applicant / Defendant's husband is also carrying out business of sale of utensils in the premises admeasuring 15 x 10 ft. in respect of which the fact there was no convincing denial, the Trial Court held that no hardship would be caused to the Defendant if the decree was passed. The Trial Court had accordingly decreed the Suit by judgment and order dated 28-9-2009.

4 The Defendant carried the matter in Appeal. The Lower Appellate Court on a re-appreciation of the material on record reiterated the findings of the Trial Court and therefore did not deem it appropriate to interfere with the decree passed by the Trial Court. Hence as indicated above there are concurrent orders passed by the courts below as regard the entitlement of the Plaintiffs to a decree on the ground of bonafide requirement.

5 The Learned Counsel appearing on behalf of the Applicant would contend that the Plaintiffs are now in possession of another premises pursuant to the decree passed against the tenant one Godavari Vhatkar and therefore the

said fact would impact the decree which has been passed on the ground of bonafide requirement against the Applicant. The Learned Counsel would contend that the ground mentioned in the Suit against the said Godavari Vhatkar is the same ground as mentioned in the instant Suit.

6 In my view, the factum of the proceedings being filed against the said Godavari Vhatkar was mentioned in the plaint, the Lower Appellate Court has adverted to the said fact whilst confirming the decree passed by the Trial Court. The Plaintiffs had filed a Suit against the said Godavari Vhatkar also on the ground that on account of growing business the premises available with the Plaintiffs are inadequate. In my view the said fact would therefore not have any impact on the decree passed by the Trial Court as confirmed by the Lower Appellate Court. In that view of the matter, no case for invoking the Revisionary Jurisdiction of this court is made out. The Civil Revision Application is accordingly dismissed.

[R.M.SAVANT, J]