

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.681 OF 2015

Shri. Madhukar Sadashiv Tavade

.. Applicant

Versus

Shri. Shirish Prabhakar Vankundre and another

.. Respondents

Mr. S. S. Koregave, for the Applicant.

Mr. P. D. Dalvi, for the Respondents.

CORAM : R.M. SAVANT, J.

DATE : 26th FEBRUARY 2016

PC.

1. The writ jurisdiction of this Court is invoked against the order dated 08.04.2015 passed by the Learned District Judge-1, Kolhapur, by which the Appeal filed by the Petitioner being Regular Civil Appeal No.67 of 2010 came to be dismissed and resultantly, the judgment and decree dated 29.01.2010 passed in Regular Civil Suit No.759 of 2007 came to be confirmed.

2. The Applicant herein was the tenant in respect of the suit premises which are two rooms admeasuring about 23 ft. in length and 14 ft. in width and 12 ft. in length and 7 ft. in width respectively totally admeasuring 406 sq.ft. out of CTS No.155/2 situated within the limits of

'C' Ward of Kolhapur Municipal Corporation.

3. The suit was preceded by the notice dated 13.06.2006 issued by the Respondents/Plaintiffs calling upon them to pay the arrears of rent for the preceding three years and also calling upon them to vacate the premises as the Plaintiffs bonafide required the suit premises for their own accommodation. The said notice came to be replied to on 14.06.2006 by the Defendant. The instant suit came to be filed on 05.09.2007 and was founded on two grounds i.e. default in payment of rent prior to the filing of the suit and for the bonafide requirement of the Plaintiffs. The Trial Court framed relevant issues arising out of the pleadings of the parties relating to the default in payment of rent and the bonafide requirement of the Plaintiffs. In support of their respective assertions the parties led evidence. The Petitioner herein i.e. the Defendant sought to place reliance on the fact that the amount of Rs.15,000/- was paid to the Plaintiffs which was covering rent for the period up to the year 2009. The said evidence was in so far as the ground of arrears of rent was concerned. The Petitioner/ Defendant also sought to place reliance on some money order receipts which according to the Petitioner were not accepted by the Plaintiffs. In so far as the ground of bonafide requirement is concerned, it was the case of the Defendant that the Plaintiffs have constructed upon a plot of land which was their ownership and have put up a building known

as “Padmavati Plaza” It was also their case that the Plaintiffs have other premises where they can accommodate themselves. In so far as the Plaintiffs were concerned, they relied upon the fact that there was a default for the preceding three years and that in spite of the suit being filed, the arrears had not been deposited within the period prescribed by Section 15 of the Maharashtra Rent Control Act, 1999. It was the case of the Plaintiffs that presently they are residing in the property of their maternal uncle and though their mother has a share in the said property they would like to shift to their own property and can reside there. It was also the case of the Plaintiffs that the Defendant has premises near Khandoba Talim and therefore, there would not be any inconvenience to the Defendant, if the decree of possession is passed. The Trial Court on the basis of the evidence on record held that the factum of payment and the clearance of arrears up to 2009 on the basis of amount of Rs.15,000/- allegedly paid by the Defendant to the Plaintiffs could not be said to be proved. The Trial Court refused to accept the case of the Defendant based on the money order receipts as money order receipts were blank as to whom they were sent and the amount. The Trial Court also observed that the said receipts were for the period prior to the notice i.e. notice dated 14.06.2006 and therefore, would not aid the Defendant in his case that the amount was tendered, but was refused.

4. In so far as the ground of bonafide requirement is concerned, the Trial Court held that since it is the case of the Plaintiffs that they were residing in the maternal uncle's house and since they desired to shift to the premises which were of their ownership, the need can be said to be reasonable and bonafide. The Trial Court adverted to the judgments of this Court, wherein it has been held that the tenant cannot dictate to the landlord as to how he has to reside. The Trial Court also adverted to the fact that though admittedly the building "Padmavati Plaza" was constructed by the Plaintiffs, the said building has premises ranging between 100 sq.ft. to 300 sq.ft. which are to be used for commercial purposes and since the requirement of the Plaintiffs is for residence, the said premises cannot be taken into consideration. The Trial Court also considered the issue as to whom greater hardship would be caused and came to a conclusion that since the Defendant has his own premises at Khandoba Talim, it would be the Plaintiffs who would suffer hardship if the decree is not passed, than to the Defendant if the decree is passed accordingly by the judgment and order dated 29.01.2010 has decreed the suit.

5. The aggrieved Defendant carried the matter by way of Regular Civil Appeal No.67 of 2010. The Lower Appellate Court as can be seen from the order as on a re-appreciation of the evidence on record did

not deem it appropriate to interfere with the decree passed by the Trial Court and has accordingly dismissed the Appeal.

6. In the light of the findings of fact recorded by the Courts below, it is not possible to accept the contentions urged on behalf of the Petitioner by Mr. S. S. Koregave based on the evidence on record that the Courts below have erred in decreeing the suit. Hence, 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]