

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

CIVIL REVISION APPLICATION NO.235 OF 2016

Praveen Kumar Bharmal .. Applicant
Vs.
Deepak Hanumant Kadam .. Respondents

Mr.P.G. Lad for the applicant.

Mr.Prashant Pratap, Senior Advocate a/w Mr.Akshay Shah for the respondents.

CORAM : R.D. DHANUKA, J.

DATE : 2nd May 2016

P.C.

. By this application filed under Article 227 of the Constitution of India, the applicant has impugned the order passed by the learned District Judge, Thane on 26th October 2015 dismissing the appeal filed by the applicant (original tenant). The respondent-landlord (original plaintiff) had filed a suit for eviction in the year 2011 against the applicant inter alia on two grounds i.e. on the ground of bonafide requirement of the landlord for carrying on business and on the ground of arrears of rent. During the course of hearing of the plaint, the plaintiff did not press the ground of arrears of rent.

2. Both the parties led oral evidence of the witnesses before the learned trial Judge. The respondent examined his son also as a witness for proving his case of reasonable and bonafide requirement of the suit premises. The respondent had filed a suit for eviction against the applicant. The respondent had also offered another premises admeasuring 200 sq.ft. i.e. shop premises on tenancy which is at the distance of 10

minutes from the suit premises. The premises offered to the applicant was admittedly larger than the premises occupied by the applicant.

3. Learned trial Judge framed five issues. In so far as the issue as to whether the plaintiff (respondent herein) had proved that the suit premises were reasonably and bonafide required by him is concerned, the learned trial Judge has rendered a finding in favour of the plaintiff. On the issue of possession also, the learned trial Judge rendered a finding in favour of the plaintiff and against the defendant (applicant herein).

4. Being aggrieved by the said judgment and decree passed by the learned trial Judge, the applicant herein filed an appeal (Civil Appeal No.89 of 2015) before the learned District Judge, Thane. Learned District Judge has rendered a detailed judgment and has dismissed the appeal filed by the applicant.

5. Mr.Lad, learned counsel for the applicant states that the learned trial Judge as well as the appeal Court did not render any finding of bonafide requirement in favour of the plaintiff. He submits that unless such finding was rendered, no decree for eviction could be passed by the trial Court. He submits that the applicant has been carrying on business in the suit premises since 1972 and has in the possession thereof. He also invited my attention to some portion of cross-examination of son of the plaintiff examined by him. He submits that cross-examination of the said witness was not in conformity with the examination in-chief.

6. It is submitted by learned counsel for the applicant that the learned trial Judge, however, discarded the cross-examination of the said

witness and has passed an erroneous judgment and decree against the applicant. It is submitted by the learned counsel that the respondent had offered an alternate premises to the applicant admeasuring 200 sq.ft. He submits that if the respondent could offer the said premises to the applicant, the respondent could have used the said shop for carrying on his business.

7. Mr.Pratap, learned senior counsel appearing for the respondent supported the findings rendered by the two Courts below and submits that this Court cannot interfere with the finding of fact. Though the respondent had offered alternate accommodation to the applicant which is a larger area in the suit premises, the applicant did not accept the said premises. He submits that market rent of the alternate premises is more than Rs.19,000/- per month as against the rent of Rs.200/- being paid by the applicant to the respondent. He submits that since the findings of facts rendered by the two Courts below being concurrent findings, this Court cannot interfere with such findings of facts under Article 227 of the Constitution of India.

8. A perusal of the order passed by the learned trial Judge indicates that the learned trial Judge has considered documentary and oral evidence led by both the parties and has rendered a finding of fact that the respondent-landlord had proved the reasonable and bonafide requirement of the suit premises to start business in the interest of his son who was suffering from various diseases. Learned trial Judge after considering various judgments relied upon by both the parties has held that it is for the landlord to decide what would be his requirement.

9. A perusal of the finding recorded by the appeal Court clearly indicates that the appeal Court has independently considered the documentary and oral evidence led by both the parties and has taken the same view. In my view, the findings of facts rendered by the two Courts below being concurrent findings and being not perverse, this Court cannot interfere with such findings of facts under Article 227 of the Constitution of India.

10. In my view, the respondent had fairly offered an alternate premises which is larger in area than the suit premises and which would have fetched rent of Rs.19,000/- as against the rent of Rs.200/- being paid by the applicant to the respondent-landlord. Both the Courts below have considered this aspect while allowing the suit filed by the landlord. In my view, the application is devoid of merits and is accordingly dismissed. No order as to costs.

11. At this stage, Mr.Lad, learned counsel for the applicant seeks time to shift in the alternate premises/shop no.4 of Maher premises. Mr.Pratap, learned senior counsel appearing for the respondent opposes this request on the ground that within 15 days from the date of decree passed by the learned trial Judge, the respondent had offered the said premises to the applicant. The applicant, however, did not accept the said alternate premises in terms of the decree passed by the learned trial Judge. He submits that the respondent has waited for the applicant to accept the said alternate premises for an year. The respondent had already lost revenue out of the said alternate premises in the sum of more than Rs.19,000/- per month. He submits that there was no stay granted by the

learned trial Judge on the said decree as well as by the Appeal Court. He submits that the applicant thus cannot now shift to the alternate premises at this stage. It is submitted that the respondent had already given the said premises on leave and license in favour of third party.

12. A perusal of clause 4 of the decree passed by the learned trial Judge indicates that even if the defendant did not show his inclination to shift in that premises that will not be a hurdle to the plaintiff to evict the defendant from the suit premises by execution of the decree. Since the defendant has not shifted to alternate premises nor there was any stay on the decree passed by the learned trial Judge, the respondent-landlord is entitled to execute the decree.

13. Request of the learned counsel for the applicant to seek time to shift to the alternate premises is accordingly rejected.

R.D. DHANUKA, J.