

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

CIVIL REVISION APPLICATION NO.196 OF 2014

Narangibai @ Navrangibai Bastimal Rathod

and others

.. Petitioners

Versus

Krishnarao Sitaram Kadam

(Deceased through legal heirs)

Vijaya Krishnarao Kadam and others

.. Respondents

Ms. Prabha Badadare i/by Mr. P. R. Arjunwadkar, for the Petitioners.

Mr. A. J. Kandarkar, for the Respondents.

CORAM : R.M. SAVANT, J.

DATE : 12th FEBRUARY 2016

PC.

1. The revisionary jurisdiction of this Court is invoked against the order dated 11. 12.2013 passed by the Learned District Judge-8, Thane, by which order, the Appeal filed by the Petitioners being Civil Appeal No.152 of 2011 came to be dismissed and resultantly, the judgment and decree dated 26.07.2011 passed by the Trial Court came to be confirmed.

2. The suit in question being RCS No.413 of 2015 was filed by the Respondent/original Plaintiff for eviction of the Petitioners/original

Defendants. The eviction was inter-alia sought on three grounds namely, default in payment of rent which include the default in payment of tax and water charges and causing nuisance and annoyance and on the ground of bonafide requirement for the purposes of residence and for business of his son. In so far the first two grounds are concerned, the Trial Court returned a finding against the Plaintiff. It is the third ground i.e. the bonafide requirement for the purpose of residence and business of his son that the suit came to be decreed. In so far as the said ground is concerned, the Trial Court on the basis of the material on record came to a conclusion that the Plaintiff does not have any other place of residence and place for business of his son who has completed his education and who is handicapped. The possession of the premises has been sought on the ground of bonafide requirement to start a cycle shop and also to use it for residence. It has come on record that the Plaintiff along with his son Sameer is carrying out business in unauthorized construction admeasuring 10 ft. X 6 ft. patra shed by the side of the suit premises. The case of the Defendants that the Plaintiff has other premises has not been accepted by the Trial Court as the said premises are in occupation of the tenants. The Trial Court also did not accept the case of the Defendants that the Plaintiff has obtained an amount of Rs.35 lakhs to 40 lakhs out of the sale of the premises as the Defendant did not produce any cogent material to support

the said case. The Trial Court therefore came to a conclusion that the Plaintiff has made out a case of reasonable and bonafide requirement of the premises in question for accommodating his son.

3. In so far as hardship is concerned, the Trial Court has returned a finding in favour of the Plaintiff and held that since the Defendant has alternate premises, the Defendant can very well make arrangements for his residence in the said alternate premises. However, the Plaintiff would suffer if the decree is not passed. There are no other premises, wherein the Plaintiff can accommodate his son for the purpose of carrying out the business of cycle mart and residence. The Trial Court accordingly by its order dated 26.07.2011 decreed the suit and directed the Defendants to hand over possession. In the Appeal filed by the Defendants, the Lower Appellate Court on a re-appreciation of the material on record did not find any reason to interfere with the decree passed by the Trial Court as according to the Lower Appellate Court the said decree has been passed taking into consideration the material which has come on record and therefore the findings of the Trial Court on the said ground of bonafide requirement and hardship according to the Lower Appellate Court could not be faulted with. Hence, both the Courts below have concurrently passed orders in respect of the bonafide requirement of the Plaintiff as also hardship. In my view, having regard to the concurrent

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findings of fact recorded by the Courts below, no case for interdiction in the revisionary jurisdiction of this Court is made out. The Civil Revision Application is accordingly dismissed.

[R.M. SAVANT, J]