

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.273 OF 2016**

Shri Rampalat Ramkishor Yadav ..Applicant

Vs

Shri Dattatray Ganpat Kotavdekar, .. Respondent

Ms. Manisha Jagtap i/b J. Shekhar & Co., Advocates for Applicant.

CORAM : R.G.KETKAR,J.
DATE : 16/09/2016

PC:

1. Heard Ms. Manisha Jagtap, learned counsel for the applicant at length.
2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicant, hereinafter referred to as 'defendant', has challenged the judgment and decree dated 12.6.2013 passed by the learned Judge presiding over Court Room no. 10 of the Court of Small Causes Court at Mumbai in R.A.E. Suit No.1408 of 2009 as also the judgment and decree dated 5.1.2016 passed by the Appellate Bench of the Small Causes Court in Appeal No. 87 of 2013. By these orders, the Courts below decreed the suit instituted by the respondent, hereinafter referred to as 'plaintiff', under section 16(1)(g) of the Maharashtra Rent Control Act, 1999 (for short, 'Act') and directed

the defendant to hand over vacant and peaceful possession of Tin shed admeasuring about 10'x 15', situate on land bearing CTS No.132 of village Kurla, behind Kanji Sheth Chawl, Match Factory Lane, Kurla, Mumbai-400070 at village Kurla (for short, 'suit premises') to the plaintiff within two months.

3. The plaintiff came with the case that he is residing in the suit premises in Vijay Mansion, which consists of two rooms. The plaintiff is residing along with his brother Digamber who retired from Railway Department and deserted sister Ms Prabhavati. Due to shortage of premises, the plaintiff's other brother Anand has taken premises at Sanpada, Mumbai where he is staying along with his wife Smita and her sons Jyaesh and Umesh. Because of the shortage of accommodation, the plaintiff and his brother Digamber have not performed marriage. They want to marry. Defendant has several premises and, therefore, no hardship will be caused to him in the event of passing of eviction decree.

4. Defendant resisted the suit and denied the requirement. Ms. Jagtap submitted that the Courts below accepted the requirement set up by the plaintiff. She submitted that the plaintiff and his brother Digamber are more than 60 years. In short, they are not of marriageable age. Requirement pleaded by the plaintiff is artificial. For all these reasons, she submitted that the Courts below were not justified in passing the decree.

5. I have considered the submissions advanced by Ms Jagtap. I have also perused the material on record. The learned trial Judge has considered this contention in paragraph 22 and has observed that particularly at the age of 60, person requires partner/companion to spend time. Because at this stage, in absence of partner/companion, nobody looks after aged persons. There is no one to look after plaintiff and his brother and, therefore, they want to perform marriage. Plaintiff's brothers are residing separately.

6. As far as the appellate court is concerned, in paragraph 34 the appellate court noted that the plaintiff's brother Anand and elder brother Vasant are residing at Sanpada and Goregaon respectively. The appellate court also considered the fact that presently the plaintiff is residing along with his brother Digamber and sister Prabahvati and accommodation in their possession is not sufficient for maintaining privacy of the plaintiff and his brother Digamber who are unmarried. The Courts below discarded the submission that Prabhavati was not residing with the plaintiff by considering the documentary evidence on record.

7. As far as other contention raised before the courts below about the suit property is situate in slum area is concerned, Ms Jagtap reiterated the contentions advanced before the Courts below. Perusal of the impugned orders shows that after

considering the evidence on record, the courts below have held that the suit property is not situate in slum area.

8. In view thereof, I do not find that the Courts below committed any error in passing the impugned orders. Hence, Application fails and the same is dismissed.

(R.G.KETKAR, J.)