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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.577 OF 2016

Pandurang Ramdas Joshi ..Applicant.

V/s.

Ulhas Shankar Patankar ..Respondent.

Mr.Makarand Panchakshari for the Applicant.

Mr.Rajesh Patil for the Respondent.

CORAM : N.M.JAMDAR, J.

DATED : 19 DECEMBER, 2016

ORAL ORDER

The Applicant has challenged the concurrent judgments and orders passed by the Civil Judge, J.D. Thane in Regular Civil Suit No.814/2013 and by the District Judge, Thane in Civil Appeal No.34/2015 whereby the suit filed by the Respondent-landlord on the ground of bonafide requirement has been decreed and the appeal filed by the Applicant is dismissed.

2. The suit was filed by the Respondent-landlord for bonafide requirement for himself and his son. It was stated that the premises wherein the Respondent-landlord is currently staying

has been subject to a notice by the Planning Authority on the ground that it is unauthorized and that the son of the Respondent-landlord is of marriageable age, now married, requires the premises. The Applicant did not enter the witness box or examine any witness and nor lead any evidence except filing a written statement. In the plaint as well as in the evidence of the Respondent-Plaintiff, a detailed history of how the premises came to him after the earlier premises of his father were divided between him and his brother. It was stated that the premises which came to his share has two tenants and due to financial constraints, he had sold that premises to those tenants on ownership basis. This offer at that time was not accepted by the Applicant. Both the Courts, therefore, found that the need of the Respondent-landlord was bonafide and the premises were required for the residence of his son.

3. The learned counsel for the Applicant has reiterated his submission regarding the selling of the flats by Respondent-landlord and also contended that the aspect of comparative hardship has not been seen in its proper perspective. As far as the selling of the flat is concerned, the Respondent-Plaintiff has given adequate explanation, which has been accepted by both the Courts, which approach cannot be said as illegal or without jurisdiction. The Respondent-landlord has proved that he has received the notice from the local authority in respect of the premises currently in his occupation and that his son who is now married and requires the premises. The premises in possession of

the Respondent-landlord is 370 sq. ft. consisting of a hall and kitchen and the hall is used for sitting and sleeping and, therefore, his son will also require an independent premises after marriage.

4. Therefore, the only question that remains is of comparative hardship. It is stated by the Applicant in his written statement that he does not wish to stay with his sons who are settled and wants to stay separate. Before both the Courts, it was the case of the Applicant was that the Applicant wishes to stay separately from his sons in a dignified way of living. Considering this position and the age of the Applicant, it was put to the learned counsel for the Respondent whether the Applicant can be permitted to reside in the suit premises till his life time. The learned counsel for the Respondent, on instructions, agreed. After that matter was adjourned. However, surprising ,after the proposal was accepted by the Respondent, the learned counsel for the Applicant insisted that the matter has to be argued as the Applicant's son has interest in the said property. There is no such independent right. Such stand will have to be deprecated. The Applicant has clearly stated that he wished to stay alone, there is no question of the son of the Applicant having any right in the premises. No such case was put up by the Applicant. Therefore, the application is being pressed, it appears, on the instructions of his son and not on the instructions of the Applicant himself, which is a very unfortunate state of affairs. A reasonable stand taken by the Respondent-landlord is not accepted by the son of the Applicant, purely with a greed for the premises. Bonafide need of

the landlord is proved, the offer of the Respondent to permit the Applicant to stay in the premises till his life time is refused by the Applicant's advocate on instruction from Applicant's son. In the circumstances, nothing further can be done in this application except confirming the findings of fact rendered by both the Courts. The Revision Application is accordingly dismissed with costs quantified at Rs.25,000/- payable to the respondent within four weeks from today.

(N.M.JAMDAR, J.)