

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7703 OF 2016
(CONVERTED FROM C.R.A.NO.355 OF 2014)**

Shri Dundubhai Maruti Sarvagad

..Applicant

Vs

Smt. Shalini Janardhan Bhingare
and Ors

.. Respondents

Mr. Shreyas Adyanthaya, Advocate for Applicant.
Mr.P.K.Hushing, Advocate for Respondents.

CORAM : R.G.KETKAR,J.
DATE : 05/07/2016

PC:

1. Heard Mr.Shreyas Adyanthaya, learned counsel for the applicant and Mr. P.K.Hushing, learned counsel for the respondents 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 19.1.2009 passed by the learned Addl. Judge, Small Causes Court Pune in Civil Suit No.288 of 2007 as also the Judgment and decree dated 18.1.2014 passed by the learned District Judge-10, Pune in Civil Appeal No.138 of 2009. By these orders, the Courts below decreed the suit instituted by the respondents, hereinafter referred to as 'plaintiffs', under section

16(1)(g) of the Maharashtra Rent Control Act, 1999 (for short, 'Act').

3. In view of Section 7 of C.P.C., leave to convert this Revision Application into Writ Petition is granted. Amendment shall be carried out during the course of the day.

4. In support of this Petition, Mr. Adyanthaya submitted that earlier the plaintiffs had instituted Suit No. 1387 of 1989 claiming possession of the suit premises on the ground of bonafide and reasonable requirement. Though the Court accepted the requirement of the plaintiff as reasonable and bona fide, the suit was dismissed on the ground of hardship. He submitted that the Courts below have decreed the suit under section 16(1)(g) of the Act and also held that greater hardship will be caused to the plaintiffs as there are 22 family members in the family of the plaintiffs. However, the Courts below did not consider the fact that the defendant is 87 years old and that he is not in good terms with his elder son who is residing at Hadapsar. In other words, if the decree of eviction is passed, he will be rendered homeless and he cannot shift to Hadapsar where his elder son is residing. Because of financial condition of the defendant, he could not secure alternate accommodation. He, therefore, submitted that the defendant may be permitted to stay in the suit premises during his life time and his tenancy may be

terminated so that it will not devolve on legal representative of the defendant.

5. On the other hand, Mr. Hushing submitted that the plaintiffs have filed affidavit placing on record that there are 25 members in the family in the family of the plaintiffs. In the family of the plaintiffs there are 6 couples. 4-5 members are studying in college and about 10 children are studying in schools. These couples and sons who are marriageable age, need separate accommodation on the ground of privacy. As against this, elder son of the defendant is residing at Hadapsar. The learned trial Judge has considered whether the defendant can reside with his elder son at Hadapsar. He further submitted that 25 family members of the plaintiffs are residing in four small rooms, each room admeasures 10'x10'. The said rooms are not sufficient for residence of the plaintiffs' family consisting of 25 members. Mr. Hushing submitted that the plaintiffs are not agreeable to permit defendant to stay in the suit premises during his life time.

6. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. It has come on record that the defendant's elder son is residing at Hadapsar. The defendant came with the case that his elder son is not ready and willing to accommodate him at the premises at Hadapsar. In paragraph

22, the learned trial Judge has considered this aspect and observed that the defendant has merely deposed that he has been refused by his son but no material is produced on record to substantiate this contention. In fact, in the written statement no such plea was taken. The learned trial Judge noted that for all these years, the defendant did not make any attempt for finding out suitable alternate residence.

7. As far as the Appellate Court is concerned, the Appellate Court has considered the requirement of the plaintiffs and held that plea set up by the plaintiffs is reasonable and bona fide. As far as the question of comparative hardship is concerned, it is considered in paragraphs 24 to 34. The learned District Judge noted that both the daughters of the defendant are married and are residing at their matrimonial places. His elder son Vijay is residing separately at Hadapsar. After marriage, his elder son Vijay is residing separate and there is no communication between them. The learned District Judge also considered the financial condition of the defendant and noted that the suit is filed 15 years back and since then no sincere efforts were made by the defendant for searching alternate accommodation. As noted earlier, defendant has not established that he cannot reside with his elder son Vijay.

8. Thus, the Courts below after appreciating the evidence on

record have concurrently held that the plaintiffs have established the requirement as both reasonable and bonafide and that greater hardship will be caused to the plaintiffs in the event of refusal of passing of eviction decree. Plaintiffs are not agreeable to permit the defendant to stay in the suit premises during his life time in view of members in their family. I do not find approach of the plaintiffs unreasonable. Defendant was not in a position to demonstrate that the findings recorded by the Courts below are based on no evidence or that they are contrary to evidence on record. Defendant was also not in a position to demonstrate that no reasonable or prudent person would have reached the conclusions arrived at by the Courts below. For all these reasons, I do not find that the Courts below have committed any error in passing the decree under section 16(1)(g) of the Act. No case for invocation of powers under Section 115 is made out. Hence, Petition fails and the same is dismissed.

(R.G.KETKAR, J.)

