

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 382/2014

Jamaluddin Rahim Khan

... Applicant

V/s.

Mrs. Sagrabi Sheikh Mohammad Bakridi

... Respondent

Mr. Ranvir Shekhavat a/w. Jagdish Choudhari i/b. Raj Legal for the
Applicant

Mr. R. D. Mishra for the Respondent.

CORAM: K.K. TATED, J.

DATED : APRIL 4, 2016

PC. :

1. Heard the learned counsel for the parties. By this Civil Revision Application, the defendant challenges the judgment and decree passed by both the courts below directing the applicant to hand over vacant and peaceful possession of the suit premises viz. Room No.1, Chawl No.1, Bakridi Chawl, Jamil Nagar, Pratap Nagar Road, Bhandup (W), Mumbai – 400 078 to the plaintiff within 3 months and to hold a separate enquiry in respect of the mesne profits under Order XX Rule 12 of the Code of Civil Procedure, 1908 from the date of decree till delivery of possession of the suit premises.

2. For the sake brevity, the parties will be referred to as per their nomenclature in the plaint i.e. applicant – defendant and respondent – plaintiff.

3. The plaintiff filed RAE Suit No.1702/2007 in the Court of Small Causes at Mumbai for vacant and peaceful possession of the suit premises on the ground that she is in *bona fide* need of the same for her family members. The plaintiff in plaint, submitted that her accommodation was not sufficient to accommodate all her family members. The plaintiff was in possession of a room admeasuring 10' X 20'. She was residing with her 2 sons viz. Mainuddin and Rashid and a daughter Rajia along with Sheikh Shahin, her daughter in law. Hence, the plaintiff had filed suit for possession of the suit premises. The defendant filed their written statement on 17.03.2008 and resisted the suit. The defendant in written statement pleaded that the plaintiff and her children have sufficient accommodation. The defendant submits that the plaintiffs have 4 rooms i.e. Room No.10, 11 and 20 in Chawl No.1 and Room No.17 in Chawl No.2. On the basis of this pleading, the trial court framed following issues:

	ISSUES	FINDINGS
1	Does the plaintiff prove that she requires the suit premises reasonably and bonafide for her own use and occupation and her family members ?	In the affirmative
2	To whom greater hardship will be caused by passing the decree than by refusing to pass it ?	In favour of the plaintiff
3	Whether the plaintiff is entitled to recover possession of the suit premises /	In the affirmative.
4	What order and decree ?	As per final order

4. After hearing both sides and considering the evidence on record, the trial court decreed the suit.

5. Being aggrieved by the judgment and decree passed by the trial court on 20.03.2010 the defendant preferred appeal No.236/2010 in the Court of Small Causes at Mumbai, which was also dismissed by judgment and decree dated 12.03.2014. Hence, the present Civil Revision Application.

6. The learned counsel for the defendant submits that both the courts below erred in coming to the conclusion that the plaintiff has made out a case of *bona fide* requirement of the suit premises. He submits that both the courts below failed to consider the fact that the plaintiff has sufficient accommodation to accommodate her family members and these facts were admitted by the plaintiff's witnesses. In spite of that the trial court passed decree against the defendant and same was confirmed by the Appellate Bench of the Small Causes Court. He submits that the defendant tenant has specifically pleaded in his written statement that the premises being room No.10, 11 and 20 were in possession of the plaintiff landlady. He submits that the landlady has not denied these facts by filing a rejoinder. He submits that the trial court specifically recorded in the impugned judgment and decree that the plaintiff admitted in her deposition that she was holding 4 rooms in the said chawl. He submits that the defendant does not have any premises. He submits that if the Civil Revision Application is not allowed, irreparable loss and injury will be caused to them. Hence, the judgment and decree passed by both the courts below be set aside.

7. On the other hand, the learned counsel for the plaintiff submits

that both the courts below concurrently held that the plaintiff proved her case of *bona fide* requirement of the suit premises. He submits that though the defendant filed written statement defending her case before the trial court, he failed to enter into witness box. He submits that the defendant has not brought on record any evidence to justify his case. He submits that both the courts below categorically held that the plaintiff's family consists of more than 10 members and therefore, they require additional space for her family members only. He submits that both the courts categorically held that the defendant has not brought on record to show what is *mala fide* on the part of the plaintiff to get the possession on the ground of *bona fide* requirement. Hence, there is no substance in the Civil Revision Application. Same is liable to be dismissed.

8. Heard both sides, perused copy of the plaint, written statement, deposition of parties and the judgment and decree passed by both the courts below along with relevant documents.

9. The issue involved in the present Civil Revision Application is “Whether both the courts below erred in coming to the conclusion that the plaintiff has made out a case of *bona fide* requirement of the suit premises?”.

10. It is to be noted that there are concurrent findings of fact recorded by the courts below. The Apex Court in the matter of ***V.Sumatiben Maganlal Manani (dead) by L.Rs. Vs. Uttamchand Kashiprasad Shah and Anr.*** 2011 (6) MLJ 1 held that the High Court, in exercise of its revisional jurisdiction, should not interfere with

the findings of facts properly arrived at by the courts below. In the matter of *Sarla Ahuja Vs. United India Insurance Co. Ltd. AIR 1999 SC 100* the Apex Court held that it is not permissible to the High Court to reappraise and re-appreciate the evidence for reaching a different finding in revisional jurisdiction. In the matter of *Sunilkumar and Anr. Vs. Anilkumar 2008 (9) SCC 241* the Apex Court held that normally, the High Court should not interfere with the concurrent findings of fact in Rent Act matters unless and until the orders passed by the courts below are perverse and contrary to law.

11. This Court, in the matter of *Sara Rauf and Anr. Vs. Durgashankar Ganeshlal Shroff 2007 (4) MLJ 129* held that the landlord is a best judge of his essential requirements. He has complete freedom in the matter. It is no concern of the courts to dictate to the landlord, how, and in what manner he should live or to prescribe for him the residential standard of their own. There is no law which deprives the landlord of the benefits of his enjoyment of his property.

12. In the present proceedings, both the courts categorically held that the plaintiff's family consists of more than 10 members. They were residing in a room admeasuring 10' X 20'. Both the courts held that for want of accommodation, the plaintiff had to postpone marriage of her sons. The defendant has not brought on record the perversity in the judgment and decree passed by both the courts below. Bare reading of the judgment and decree passed by both the courts below shows that they considered each and every fact of the matter and held that the plaintiff has made out a case of *bona fide* requirement.

13. Considering these facts and the concurrent findings of fact recorded by both the courts below, I am of the opinion that the defendant has not made out any case for stay of the judgment and decree passed by the trial court directing the defendant to hand over vacant and peaceful possession of the suit premises to the plaintiff. Hence, the Civil Revision Application stands rejected.

(K.K. TATED, J.)