

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 357 OF 2015**

Shri Uday Shivram Patne

..Applicant

Vs

Shri Babanrao Baburao Pawar

.. Respondent

Mr. Abhijit B. Kadam, Advocate for Applicant.
Mr. Sagar R. Jadhav, Advocate for Respondent.

CORAM : R.G.KETKAR,J.
DATE : 14/09/2016

PC:

1. Heard Mr. Abhijit Kadam, learned counsel for the applicant and Mr.Sagar Jadhav, learned counsel for the respondent 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 'plaintiff', has challenged the Judgment and decree dated 31.7.2006 passed by the learned Civil Judge, Jr. Dn., Phaltan in Regular Civil Suit No.144 of 2000 as also the Judgment and decree dated 19.10.2012 passed by the learned District Judge-3, Satara, in Regular Civil Appeal No. 239 of 2006. By these orders, the Courts below dismissed the suit instituted by the plaintiff invoking ground of arrears of rent and reasonable and bonafide requirement as contemplated by Sections 12 and 13(1) (g) of the Bombay Rents, Hotel and House Rates Control Act,

1947 (for short, 'Act').

3. In support of this Application, Mr. Kadam strenuously contended that the agreed rent was Rs.800/-. The plaintiff issued demand notice dated 16.10.1999 claiming arrears of rent from 19.8.1998 to 16.10.1999 at the rate of Rs.800/- per month. He submitted that the Courts below committed serious error in holding that the agreed rent between the parties was Rs.700/- per month and that the defendant is not a defaulter.

4. As far as the ground of reasonable and bonafide requirement is concerned, he submitted that the Courts below declined to pass decree on the ground that there are several premises in possession of the plaintiff and that nobody in the plaintiff's family has special skill or training for running eating house. He submitted that in particular the District Court was not justified in holding that as nobody from the plaintiff's family has special skill or training for running eating house, the plaintiff has not established his requirement.

5. On the other hand, Mr. Jadhav supported the impugned orders. He invited my attention to paragraphs 21 and 26 of the trial Court's judgment and paragraph 9 of the District Court judgment to submit that after appreciating the evidence on record the Courts below have held that the agreed rent was Rs. 700/- per month and that the defendant was regularly paying

rent in the Court which was accepted by the plaintiff. As far as the ground of bonafide requirement is concerned, he invited my attention to paragraph 10 of the District Court judgment and submitted that the plaintiff has several premises which will satisfy his requirement. He, therefore, submitted that no case is made out for invocation of powers under section 115 of C.P.C.

6. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, the suit is instituted invoking two grounds, namely, (i) arrears of rent and (ii) reasonable and bonafide requirement. As far as the arrears of rent is concerned, the plaintiff came with the case that the agreed rent between the parties was Rs.800/- per month. As against this, the defendant came with the case that the agreed rent was Rs.700/- per month. The learned trial Judge has considered this ground in paragraph 21 and 26. After considering the evidence on record, the learned trial Judge recorded a finding that the agreed rent was Rs.700/- per month. Mr. Kadam submitted that the defendant gave in writing before the police that the agreed rent was Rs.800/- per month. The learned trial Judge observed that the plaintiff did not bring on record the alleged writing before the police. The learned District Judge also considered this ground in paragraph 9 of the impugned order and

recorded a finding that the agreed rent was Rs.700/- per month. The Courts below noted that the defendant was depositing the rent in the court regularly which was accepted by the plaintiff. Thus, after appreciating the evidence on record, the Courts below concurrently recorded a finding that the plaintiff failed to prove that the defendant is defaulter. I, therefore, do not find that any case is made out by the plaintiff as far as arrears of rent is concerned.

7. As far as the ground of bonafide and reasonable requirement is concerned, it is not in dispute that the suit premises are let out for residential use. Perusal of paragraph 6 of the plaint shows that the plaintiff has pleaded requirement for running business of eating house. The Courts below have held that the plaintiff has several premises for running the said business. In particular, the plaintiff admitted in cross examination that in the year 2000 he had 4 rooms lying vacant on the ground floor in the suit property viz. C.T.S. No. 2394. In the same building the plaintiff has one hall admeasuring 1000 sq.ft and that hall was given on rent for computer business in 1997-98 which was lying vacant. After considering the evidence on record, the Courts below have turned down the ground of reasonable and bonafide requirement on the premise that the plaintiff has several premises which will satisfy his need. In view thereof as

also having regard to the fact that the suit premises are given on rent for residential purpose, the same cannot be used for commercial purpose in view of Section 25 of the Act, namely, for running eating house In view thereof, I do not find that the Courts below committed any error in dismissing the suit. Hence, Application fails and the same is dismissed.

(R.G.KETKAR, J.)