

sas

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**CIVIL REVISION APPLICATION NO.284 OF 2016**

Smt. Sunanda Subhash Gunje ..Applicant.

V/s.

Vilas Sadanand Khamitkar ..Respondent.

Mr.Abhijeet Desai for the Applicant.

Mr.A.B. Tajana for the Respondent.

**CORAM : N.M.JAMDAR, J.**

**DATED : 19 DECEMBER, 2016**

**ORAL ORDER**

Heard the learned counsel for the parties. By consent of the parties and the learned counsel for the parties, the revision is taken up for final disposal.

2. Rule. Rule, made returnable forthwith. The learned counsel for the Respondent waives service. The learned counsel for the Applicant states that as far as other respondents are concerned, they were Defendants in the suit and also in the appeal but their presence in the Civil Revision Application is not necessary in view of the order to be passed and seeks leave to delete the said Respondents. Amendment to be carried out forthwith.

3. After having heard the learned counsel for the parties, I am of the opinion that the impugned orders are required to be quashed and set aside and the matter needs to be remanded to the trial Court for considering on all the issues of requirements of the Respondent-landlord and the comparative hardship between the parties. The reason why the remand is necessitated is as under.

4. The Respondent filed Civil Suit No.1206/2001 in the Court of the Civil Judge, J.D. Solapur for recovery of possession of the suit premises from the Applicant. In the plaint, it was stated that there are number of members in the family of the Respondent-landlord as the family of the Respondent-landlord and his brothers are joint. It was stated that the Applicant has not used the premises, created sub-tenancy and the premises has become dilapidated and require demolition. It is stated that there are 16 members in the family of the Respondent-landlord for which the possession of two rooms in occupation of the Applicant are required. The Applicant has filed written statement and contended that the Applicant is not liable to be evicted. The Respondent has deliberately weakened the building so as to secure eviction. It was stated that various family members of the Respondent have settled outside Solapur and the Respondent-landlord has ample premises. On behalf of the Respondent, the Plaintiff and his brother were examined. The learned Civil Judge held that the Respondent-landlord has proved that the suit premises are required for the purpose of residence of the family members. The learned Judge held that the premises are not required for the purpose of

demolition nor any case was made out of sub-letting or the Applicant being in arrears of rent. As regards comparative hardship, the learned Civil Judge held against the Applicant. Accordingly, the suit was decreed by judgment and order 28 September, 2012. Regular Civil Appeal No.9/2013 filed by the Applicant was dismissed by the learned District Judge on 1 March, 2016.

5. The learned counsel for the Applicant has drawn my attention to the cross-examination of the Plaintiff as well as brother Laxman of the Plaintiff. This cross-examination has also been taken note of by the learned Civil Judge. If the case of the Respondent in examination-in-chief is to be considered, there is an assertion of the Respondent-landlord that 15 to 16 members in the family of the Respondent-landlord for whose purpose the premises are required. In the cross-examination, the Plaintiff and his brother have admitted that one son of the Plaintiff is at Bangalore and another is at Pune for service. One son of Laxman is staying at Latur for service. Even though it is denied that one brother Sunil is now settled in Pune, it is stated that he is a Medical Practitioner and his wife is also serving in Pune. The Plaintiff has also stated that his son Sanjay is staying at Pune. Going by these admissions, it is clear that substantial numbers of the family members will have to be removed from the number of 15 to 16 persons stated by the Respondent-landlord. It is sought to be contended on behalf of the Respondent that these persons are temporarily working out of the city of Solapur. However, it is not a plea taken by the

Respondent-landlord in the pleadings. Both the Courts have not taken note of these admissions in the cross-examination that the numbers in the landlord's family is not 15 or 16 as referred to and has proceeded to examine the need of the Respondent-landlord and the comparative hardship on that basis. Once the cross-examination is taken into consideration, the comparative hardship and the question of need of the Respondent-landlord *vis-a-vis* the premises available, undergoes a change.

6. Since a prima facie case was made out for admission of the Revision, the learned counsel for the Applicant on instructions submitted that instead of admitting the Revision Application and keeping it pending in this Court, which may taken a long time, it will be appropriate if the proceedings be remanded to the trial Court for considering the need of the members, who as per evidence led ,reside at Solapur. The learned counsel for the Respondent, on instructions ,states that the remand shall be restricted only to this issue even though the cross objections filed by the Respondent in the District Court were rejected by the learned District Judge. The leaned counsel for the applicant agrees. Even otherwise the course of action suggested is proper.

7. Accordingly, the impugned order and judgment dated 1 March, 2016 passed by the learned District Judge, Solapur in Regular Civil Appeal No.9/2013 and the impugned judgment and decree dated 28 September, 2012 passed by the Civil Judge, J.D.

Solapur in R.C.S. No.1206/2001 are quashed and set aside. The suit filed by Respondent bearing Regular Civil Suit No.1206/2001 stands restored to the file to the learned Civil Judge, J.D. Solapur only to the extent of ground of bonafide requirement of the Respondent-landlord under Section 16(1)(g) of the Maharashtra Rent Control Act, 1999. The hearing of the suit on remand will commence from the stage of oral arguments. The learned Civil Judge will make an endeavour to dispose of the suit as early as possible, preferably within a period of one year from the date the writ of this Court is received. The learned civil judge will decide the suit, keeping aside the need of the members of the Respondent's family who have settled outside Solapur and focus on the need of those members of the Respondent-landlord's family who are currently staying in the city of Solapur, as per the evidence led. As far the request to lead additional evidence ,I am not inclined to grant the same but it is left to the learned Civil Judge to decide to permit the parties to lead additional evidence, if the learned Civil Judge is of the opinion that exceptional circumstances exists that it would be in the interest of justice to do so. The suit will have to be decided on its own merits by the learned Civil Judge.

8. Parties will appear before the learned Civil Judge, Solapur on 9 January, 2017.

**(N.M.JAMDAR, J.)**