

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION**

**WRIT PETITION NO. 1157 OF 2015
WITH
CIVIL APPLICATION NO. 1483 OF 2016
WITH
CIVIL APPLICATION (ST) NO.22993 OF 2016**

Shri Voraram Gumnaji Chaudhari

.... Petitioner

Versus

Sou. Gangabai Venaram Chaudhari

.... Respondent

Jaydeep Deo for Petitioner and Applicant in CAW No.1483/16.
Suresh Dubey for Respondent and Applicant in CAWST
No.22993/16.

***CORAM : N. M. Jamdar J.
Tuesday 20 December 2016***

ORAL ORDER

. The Petitioner has challenged the Judgment and Decree dated 19 August 2008 passed by the District Judge, Pune, whereby the Appeal filed by the Respondent/Landlady was allowed and the Judgment and Decree dated 2 February 2008 passed by the Small Causes Court, Pune in Civil Suit No. 228 of 2006 dismissing the suit, was set-aside. The Decree has been passed by the learned

District Judge on the ground of bonafide requirement of the Respondent/Landlady and that greater hardship will be caused to the Respondent/Landlady, if the decree is refused.

2. Heard learned Counsel for the parties.

3. The learned Counsel for Petitioner firstly submitted that the present Suit i.e. Regular Civil Suit No. 253 of 2006 was filed pleading the need of Respondent/Landlady as that she required the premises stating that she desires to open General Stores, as she was the household with tailoring business, which was not generating sufficient income. It was stated that the family consisted by herself, her daughters and sons, and the daughters and sons are taking education and the premises are therefore required for generation of income for her. The learned Counsel for Petitioner submitted that this need no longer exists as another Suit bearing No. 32 of 2013 has been filed by the Respondent/Landlady, wherein need pleaded is of the daughter, wherein it is stated that the present premises are not sufficient to accommodate the medical store business of her daughter and son-in-law. The learned Counsel submitted that having filed a subsequent Suit, the need of the Respondent/Landlady for using premises for herself is no longer exists.

4. The present suit was filed on 21 September 2006. The learned Small Causes Court Judge had negated the contention of the Respondent/Landlady that the premises are in occupation of the Petitioner as a licensee and thereafter proceeded to dismiss the suit of the Respondent/Landlady holding that bonafide requirement is not proved. The order was passed on 2 February 2008. Thereafter Civil Appeal No. 295 of 2008 was filed and having lost in the Small Causes Court on the ground that the Petitioner was not a licensee, but a tenant, and the Appeal was pending, the subsequent Suit came to be filed. The learned Counsel for the Respondent/Landlady submitted that once a decree has been passed in favour of the Respondent/Landlady, there will be no question of continuing with the second suit

5. The context in which the second Suit was instituted will have to be kept in mind. It was after the dismissal of the present suit by the learned Small Causes Court Judge, wherein it was held that the Petitioner is a tenant and not a licensee. As far as the contention of the learned Counsel for the Petitioner that the Respondent/Landlady is precluded for pressing the need as narrated in the present suit, the concept of bonafide requirement cannot be narrowed down to this level. Broadly, the contention of

the Respondent/Landlady that the premises are required for the bonafide requirement of the family remains consistent and the variance is only regarding the details of the need. Therefore, I am not inclined to accept that the Respondent/Landlady is precluded in law from putting forth the case on the ground of bonafide requirement.

6. As far as the contention of the learned Counsel for Petitioner that there are premises in the nature of open hall available in the suit building itself is concerned, the learned District Judge has examined the aspect and has found that the said hall is not suitable, as it is connected with a very narrow lane at the back side of the premises and has rightly held that the tenant cannot dictate terms to the landlord to forced him to occupy the premises which are not ideal for business.

7. The learned Counsel for the Petitioner then submitted that the Respondent/Landlady has various premises and has sought to bring the same on record in Civil Application No. 1483 of 2016. I have gone through the documents so tendered and the averments made. The premises which are referred to in the Civil Application are situated at Village Narhe, which is two kilometers away from the suit premises. Therefore, these premises cannot be held

available for immediate use of the Respondent/Landlady. On the other hand, the Respondent/Landlady has filed Civil Application (Stamp) No. 22993 of 2016 wherein the documentary evidence has been annexed to show that the Petitioner has seven shops in the same locality. The extracts in respect of these shops have been placed on record.

8. Therefore, it cannot be said that the Respondent/Landlady has not proved the bonafide need to start a commercial activity for earning livelihood for her family ,from the suit premises. Having crossed the initial threshold of proving the bonafide need, question is of comparative hardship. In this Court, both Landlord and tenant have filed Civil Applications as above. It is fact that the Petitioner has seven shops in the very locality and therefore there is no question of any hardship to the Petitioner. There is any error nor any failure of justice. Accordingly, no interference is warranted under equitable jurisdiction under Article 227 of Constitution of India.. The Writ Petition is accordingly rejected.

9. At this stage, the learned Counsel for Petitioner seeks continuation of the ad-interim relief for a period of ten weeks. Though I am inclined to continue the ad-interim relief for the

period of eight weeks, since some time will be taking for availability of order, ad-interim order to continue for the period of 10 weeks, subject to the condition that the Petitioner will file an undertaking/affidavit of himself and all members in his family currently using the premises stating that they are in actual possession of the suit premises and they have so far neither created any third party rights or nor will part with possession. The undertaking/affidavit shall be filed on or before 9 January 2017. The learned Counsel for Petitioner undertakes to do so. His undertaking is accepted. Both Civil Applications are disposed of accordingly.

(N. M. Jamdar, J.)