

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

CIVIL REVISION APPLICATION NO.522 OF 2015

Prakash Laxman Pawar : Petitioner.
Versus
Smt. Sunita Sudhakar Saswadkar and anr. : Respondents.

Mr. Abhijeet A Joshi for the Petitioner.
Mr. Atul G Damle, Senior Advocate a/w Rupesh R Lanjekar for the Respondents.

CORAM : R. M. SAVANT, J.
DATE : 03rd February 2016

P.C.

1 The revisionary jurisdiction of this Court is invoked against the judgment and order dated 18/04/2015 passed by the learned District Judge-7, Pune by which order the judgment and decree passed by the Trail Court i.e. the learned Judge, Small Causes Court, Pune dated 20/02/2013 came to be confirmed and consequently the decree of eviction passed against the Petitioner stood confirmed.

2 The suit premises are a shop premises admeasuring 114 sq.ft. situated at CTS No.971, Sadashiv Peth, Pune. It is the case of the Plaintiff No.1 i.e. the Respondent No.1 herein that she requires the said premises for running coaching classes, after her retirement from the teaching profession. The parties went to trial and led evidence in assertion of their respective cases. It was the case of the Plaintiff No.1 that it was not possible for her to pursue her

avocation of teaching as the premises wherein she was residing with her son, daughter-in-law and grand-child were inadequate so as to conduct coaching classes therein. The Plaintiff No.1 has referred to her educational qualification wherein it has come on record that she is a Post-Graduate in Arts.

3 The Petitioner-original Defendant sought to contest the claim of the Plaintiffs for eviction on the ground of bonafide requirement by contending that the Plaintiff No.1 has obtained possession of another premises pursuant to a eviction decree passed against some other tenant and therefore the case of the Plaintiff No.1 for a decree on the ground of bonafide requirement cannot be accepted.

4 The Trial Court i.e. the Small Causes Court, Pune tested the case of the parties and on the basis of the material on record recorded a finding of fact as regards the bonafide requirement of the Plaintiff No.1 for the premises in question. The Trial Court also recorded a finding that hardship would be caused more to the Plaintiffs if the decree was not passed than the Defendant if the decree was passed. The Trial Court as indicated above accordingly decreed the suit by the judgment and order dated 20/02/2013.

5 The Defendant aggrieved by the said judgment and decree dated 20/02/2013 carried the matter in Appeal by filing Regular Civil Appeal No.289

of 2013. The Lower Appellate Court on the re-appreciation of the material on record did not find any reason to interfere with the decree passed by the Trial Court and accordingly dismissed the said appeal by the impugned judgment and order dated 18/04/2015. Hence it is the concurrent decree passed by the Courts below which is taken exception to by way of the above Civil Revision Application.

6 The learned Counsel Shri A A Joshi appearing on behalf of the Petitioner – original Defendant would contend that the Plaintiff has not made out full and true disclosure whilst the suit in question was being adjudicated by the Trial Court as well as the Lower Appellate Court, as the factum of the son having residential premises has not been disclosed by the Plaintiff No.1. The learned counsel for the Petitioner would further contend that a premises have become available to the Plaintiff No.1 by virtue of the decree passed in respect of another tenanted premises, the need of the Plaintiff No.1 cannot be therefore said to be bonafide as the Plaintiff No.1 can very well use the said premises for the purpose for which she is seeking eviction of the Defendant. It is further the contention of the learned counsel for the Petitioner that the daughter in law of the Plaintiff has already a premises wherein the Chartered Accountant's firm wherein she is a partner is carrying out its business.

7 In my view, it is not possible to accept the said contentions urged

on behalf of the Petitioner – original Defendant. A reading of the pleadings i.e. the plaint discloses that the need is that of the original Plaintiff No.1 i.e. the Respondent No.1 herein who has retired from the teaching profession and wants to continue her said avocation by running coaching classes. It is only incidentally that she has mentioned in the plaint that the present premises occupied by her are insufficient on account of the fact that she is residing with her son, daughter in law and grand-child. Hence assuming that the son has any independent residential premises, the same would not make any difference in so far as the need of the Plaintiff No.1 of the premises for running coaching classes is concerned. In so far as the contention of the Petitioner based on the fact that the daughter in law is already running a Chartered Accountant's firm in some other premises is concerned, in my view, the said fact would also not impinge upon the requirement of the Plaintiff No.1 as it is well settled that a tenant cannot dictate as to how the landlord is required to use the premises. In the light of the concurrent finding of fact recorded by both the Courts below as regards the ground of bonafide requirement, no case for interference in the revisionary jurisdiction of this Court is made out. The above Civil Revision Application is accordingly dismissed.

8 At this stage, the learned counsel appearing on behalf of the Petitioner – original Defendant prays for time to vacate the premises in question in view of the execution application already filed by the Plaintiff No.1.

In my view, it would be just and proper to grant time up to 31/03/2016 to the Petitioner – original Defendant to vacate the premises in question, however, on the usual undertaking to be filed by the Defendant in this Court within two weeks from date.

[R.M.SAVANT, J]