

Sequeira

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

CIVIL REVISION APPLICATION NO. 324 OF 2016

Ramesh Sadashiv Lanjekar .. Applicant
Vs
Ramchandra Ganpat Nimbalkar & anr. .. Respondents

Mr.S.K.Chaurasia i/b SKC legal, for the Applicant.
Mr.Keshav Borhade i/b Shelke & Co., for Respondent No.1-A.

***CORAM : N.M.Jamdar, J.
Wednesday, 30 November 2016.***

P.C. :

The Applicant has challenged the concurrent judgments and orders passed by the Appellate Bench of Small Causes Court, Mumbai and the learned Small Causes Court Judge, whereby the suit filed by the Respondent-landlord is decreed and the Appeal filed by the Applicant was dismissed.

2. The Respondent-landlord filed R.A.E Suit No.673 of 2001 seeking possession of the suit premises from the Applicant. The suit premises are a room admeasuring 160 sq.ft. in the suit chawl. According to the Respondent-landlord the Applicant was an employee of Allahabad bank, he shifted to Kolhapur in or about June, 1984 and he purchased a flat admeasuring 500 sq.ft. and has no

desire to come back to Mumbai and he has not occupied the suit premises for a period of six months preceding filing of the suit and therefore, case is made out for eviction under section 16(1)(n) of the Maharashtra Rent Control Act, 1999. Both the Courts concurrently recorded a finding of fact that the Respondent-landlord has proved that the premises were not occupied by the Appellant for continuous period of six months preceding the suit.

3. The suit was instituted on 21 September 2001 and therefore, the relevant period is from 21 March 2001 to 21 September 2001. The learned counsel for the Applicant submitted that the Appellate Court has not decided the application taken out by the Applicant for producing certain electricity bills on record which will show the occupation by the Applicant in the suit premises. He submitted that in view of this position the finding recorded by both the Courts is perverse. The learned counsel for Respondents on the other hand submitted that even assuming the electricity bills are taken into consideration the consumption is shown as very low and the bills have not been paid.

4. It has been recorded as a finding of fact that the Applicant is residing at Kolhapur since 1984 and he has purchased his own property in the year 1995. When a suit is brought on the ground that he has not used the premises for a period of six months, it was for the Applicant to demonstrate that he has in fact used the premises. The

Applicant has stated that his son has intermittently used the premises. To defeat the claim for decree under section 16(1)(k) of the Act, the tenant should demonstrate that he himself had occupied the premises during this period or that he had intention to return to the premises and in the meanwhile the family was occupying the premises. The learned counsel for the Applicant has been unable to show that the shifting of the Applicant to Kolhapur in the year 1984 was only on temporary basis. The argument that flat had to be purchased since it is in view of the rent, has rightly been negated by both the Courts taking judicial notice that rent in Kolhapur is not so high that it is better to acquire the premises than taking on rent. Therefore, both the Courts after appreciating the evidence inferred that the Applicant had no intention to return to the premises and merely wanted to keep a hold on the premises. Nothing has been produced on record to demonstrate that during this period the Applicant visited the suit flat or resided therein. Important correspondence, travel tickets could have been produced. On the other hand stand is taken that it is the son who was using the premises. Therefore, even assuming electricity bills are taken into consideration, it will not further the case of the Applicant. In these circumstances, in the limited revisional jurisdiction it is not possible to interfere with the conclusions reached by both the Courts. The view taken is a possible view. The Revision Application is accordingly rejected.

5. The learned counsel seeks continuation of the ad-interim relief. Considering the facts and circumstances, I am inclined to grant six weeks time however, since it will take some time to get copy of the order, the interim order is continued for a period of eight weeks, on the same terms and conditions as earlier.

(N.M.Jamdar, J.)