

Sequeira

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

CIVIL REVISION APPLICATION NO. 395 OF 2016

M/s.Punjabi Ghasitaram Halwai	..	Applicant
Vs		
Mr.Mustansir G. Dholkawala & ors.	..	Respondents

Mr.Ashish Mehta a/w Abhishek Sharma, for the Applicant.
Ms.Vasanti Dighe, for Respondent Nos.1 to 6.

***CORAM : N.M.Jamdar, J.
Thursday, 15 December 2016.***

Oral Order :

By this revision application the Applicant has challenged the concurrent judgments and orders passed by the learned Small Causes Court, Judge and the Appellate Bench of the Small Causes Court, Mumbai decreeing the suit filed by the Respondents-landlord and dismissing the Appeal filed by the Applicant.

2. The Respondents-landlord is a Trust known as 'Dholkawala Wakf Charity Trust', which is the owner of the premises situated at Mohammed Ali Road, Mumbai wherein the suit premises are located. The Respondent-trust runs a charitable hospital inter alia for the Dawoodi Bohra community from the said building. Suit bearing RAE Suit No.1705/2500 of 2006 was filed by the Respondent-trust

in the Small Causes Court, Mumbai on the ground of bonafide requirement in furtherance of the object of the trust and on the ground that the Applicant has carried out permanent additional alterations. The need that was pleaded was that the suit premises i.e. shops (room No.8 and 8A) on the ground floor were needed by Respondent-trust for installing sonography, pathology lab and for physiotherapy Centre. Both, the learned Small Causes Court Judge and the Appellate Bench negated the case of the Respondent-trust in respect of alterations of permanent nature carried out by the Applicant, however, decreed the suit on the ground of bonafide requirement of the Respondent-trust and held that greater hardship will be caused to the Respondent-trust.

3. Heard Mr.Ashish Mehta, learned counsel for the Applicant and Ms.Vasanti Dighe, learned counsel for Respondents.

4. Mr.Mehta submitted that the bonafide requirement has not been proved by the Respondent-trust as no particulars as to the exact number of patients and other such relevant details have not been given. He submitted that the contention that the activities cannot be carried out on the third and fifth floor is not correct as there are vacant premises available on the third and fifth floor and the fact that the lift is available to reach third and fifth floor has not been disclosed in the plaint. He submitted that the onus of proving bonafide requirement was on the Respondents which has not been discharged. Mr.Mehta submitted that as regards comparative hardship both the

Courts have given undue weightage to the temporary closure of the business due to the labour unrest. Mr.Mehta submitted that in the circumstances both the Courts have committed error in passing the impugned judgment and decree. Ms.Dighe supported the impugned order and submitted that under section 16(1)(g) of the Maharashtra Rent Control Act of 1999, the burden on the trust of proving their bonafide need is not as high provided for an individual and as far as comparative hardship is concerned, the Applicant has not only closed the current premises but the entire business in the city of Mumbai.

5. Under section 16(1)(g) there is a statutory distinction between a public charitable trust and other category of landlord. The need of the public charitable trust to carry out activities in furtherance of its objects is presumed to be bonafide. The activity, which is sought to be started that is of opening a physiotherapy Centre and Sonography and pathology lab on the ground floor cannot be stated as beyond the object of the trust. Shifting such activities on the ground floor will be a matter of convenience for the patients. Both the Courts have taken this aspect into consideration and it cannot be said that accepting this need as bonafide is an impossible view to be taken. So far as availability of the lift is concerned, it has come on record that the lift is an old lift and can only accommodate maximum four persons including the liftman. It cannot be said that the removal of inconvenience for the patients to be cramped in such small lift within a hospital is not bonafide object for the trust. As far as the argument

that shops from other tenants were made available to the trust, concurrent finding of fact has been recorded including the admission by the Applicant that the shop in possession of the Applicant is much larger i.e. 1200 sq.feet vis-a-vis the shops taken in possession from the other tenant admeasuring approximately 80 sq.ft. Therefore, both the Courts have rightly held that acquisition of premises from other tenants will not extinguish the need of the Respondent-trust therefore, the Respondent-trust had crossed the threshold of proving the bonafide need.

6. As far as comparative hardship is concerned, Mr.Mehta has taken me through the cross-examination of the Applicant wherein the Applicant had stated that initially the business was started by the father of the Applicant in partnership and after the father passed away, there is no partnership after the death of the father and there is Will executed by the father in respect of which testamentary proceedings are pending. It is stated that the labour unrest started around 1998-1999 and then it is stated that it was around 2008. It is accepted that the business at other places in Mumbai had closed down. The shop at Ghatkopar, Mumbai was disposed of and the shop at Bandra was closed. As far as the contention of Mr.Mehta that this was only a temporary closure, the Applicant has admitted that he has not produced any record in respect of the same, except copies of income tax returns.

7. In view of this evidence, it cannot be said that any error was committed by both the Courts in holding that the comparative hardship will be to the Respondent trust and not to the Applicant. Under the circumstances, there is no error committed by both the Courts neither there is any perversity in appreciation of evidence. The Revision Application is accordingly rejected.

8. Mr.Mehta seeks continuation of the ad-interim order for period of eight weeks. I am inclined to grant six weeks time however, since some time will be taken for the copy of the order, the ad-interim order dated 29 June 2016, will continue for a period of eight weeks on same terms and conditions as granted earlier. The Applicant will pay to the Respondent-trust, the arrears if any, within period of two weeks from today.

(N.M.Jamdar, J.)