

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9755 OF 2015**

Santosh Sadashiv Jadhav

..Petitioner

Vs.

Chandrakant Bhausahab Pawar & Ors.

..Respondents

Mr. Suresh Dubey for the Petitioner

Ms Lalita Panchakshari for the Respondents

CORAM : R. M. SAVANT, J.

DATE : 15th FEBRUARY, 2016

P.C.

1 There is a concurrent decree passed by the Courts below on the ground of bonafide requirement of the Plaintiffs. The subject matter of the Suit are two room admeasuring 7 x 9 sq.ft. in CTS No.69, Shivaji Nagar, Bhamburda, Old Tofkhana, Pune. The Respondents herein are the landlords original Plaintiffs who had filed the Suit in question on the ground of bonafide requirement. It was their case that there are about 17 members of the family who are residing in 5 rooms admeasuring 7 x 9 sq.ft. each. It was their case that there are three couples and their children who are mostly between ages of 2 to 11 years. It was also the case of the Plaintiffs that the Defendant owns a two storied building in Somvar Peth wherein the Defendant can make alternate arrangement for his stay.

2 The Trial Court decreed the Suit by considering the fact that there

were 17 members in the family of the Plaintiffs and that they had only 5 rooms admeasuring 7 x 9 sq.ft. at their disposal. The Trial court has also adverted to the fact that in the said 5 rooms three couples and their 11 children between ages 2 to 11 were residing on the day when the Suit was filed. The Trial Court therefore answered the issue of bonafide requirement in favour of the Plaintiffs. In so far as the comparative hardship is concerned, the Trial Court held that since the Defendant has his own building in Somwar Peth, Pune, the hardship would be more on the Plaintiffs if the decree is not passed, than if the decree is passed against the Defendant. The Trial Court accordingly by judgment and order dated 21-1-2009 decreed the Suit being Civil Suit No.65 of 2008.

3 Aggrieved Defendant carried the matter in Appeal by filing Civil Appeal No.171 of 2009 before the Appellate Court. The change in circumstances was sought to be pleaded on behalf of the Defendant. It was sought to be contended that out of the children two had died and one daughter Dhanashree had got married. It was also sought to be contended that post the decree two rooms were handed over possession of by the tenant Dethe to the Plaintiffs. The Lower Appellate Court therefore ventured to consider whether the said subsequent event would make any difference. In so far as the family members being reduced is concerned, the Lower Appellate Court has held that though the number of children had reduced on account of the death of two

children and one getting married, however during the pendency of the Suit some of them had become major and on account of which they would require place for studies etc., and therefore the requirement on account of the family was not reduced in any manner. In so far as the acquisition of the rooms on account of the surrender by the tenant Dethe is concerned, the Lower Appellate Court held that the same would not make any difference considering the fact that two rooms are admeasuring 7 x 9 sq.ft. which accommodation also taken together with the accommodation available with the Plaintiffs cannot be said to be adequate. The Lower Appellate Court accordingly confirmed the findings of the Trial Court. In so far as the comparative hardship is concerned, the Lower Appellate Court held that having regard to the fact that the Defendant owns a building in Somvar Peth Pune, it would have to be held that the hardship would more to the Plaintiffs if the decree is not passed than the Defendant, if the decree is passed. The Lower Appellate Court accordingly confirmed the findings of the Trial Court and dismissed the Appeal.

4 Hence as indicated above, there are concurrent orders passed by the Courts below on the basis of the concurrent finding of facts recorded by them. In my view, no case for exercise of the Writ Jurisdiction of this Court is made out, the Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]