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

CIVIL REVN. APPLICATION NO. 540 OF 2016

Mr. Rajendra Kondiram Mutha. ... Applicant.

V/s.

Smt. Mahananda Eknath Satpute
& Others. ... Respondents.

Mr. Avinash Avhad for the Applicant.
Mr. Vilas Tapkir for the Respondents.

CORAM : N.M. Jamdar, J.

15 November, 2016.

Oral Order :-

The Applicant has challenged the concurrent judgment and decree passed by the learned Civil Judge, Junior Division, Daund and the learned District Judge, Baramati decreeing the suit filed by the Respondent – landlord for eviction of the Applicant from the suit premises. Both the Court have concurrently found that the Respondent – landlord has proved bonafide need and also that the balance of convenience is not in favour of the Applicant as the Applicant has adequate premises.

2. Heard the learned Counsel for the parties. The learned Counsel for the Applicant firstly submitted that the Respondent – landlord had earlier filed a suit for injunction to restrain the Respondent from executing permanent construction which is again made a cause of action in the present suit and therefore, the suit is barred under the provisions of Order 2 Rule 2 of the Code of Civil Procedure. This submission taken first time in the Revision Application cannot be entertained. It was never so taken in the written statement. It was not argued in the trial court nor taken in the appeal memo, nor argued in the District Court. The objection that the suit is not maintainable in view of Order 2 Rule 2 of the Code of Civil Procedure ought to have been taken at the earliest. Even otherwise, the objection only relates to the grant of permanent construction in the suit premises. The suit is decreed also on the ground of bonafide requirement.

3. As regard the bonafide requirement is concerned, the learned Counsel for the Applicant submitted that during the appeal proceedings, possession of the adjacent shop has been handed over to the Respondent – landlord and therefore, the need of the Respondent – landlord stands satisfied. Both the Courts have recorded a finding that the Respondent – landlord is residing in a house jointly. His family consists of 12 members. The Plaintiff

No.2 to 4 are married and they have daughter and sons jointly. Plaintiff No.2 has two sons, Plaintiff No.3 also has two sons and Plaintiff No.4 has a daughter. The need to start a business cannot be stated to be not bonafide and there is no perversity in holding so in favour of the Respondent – Plaintiffs. It has been brought on record by the Respondent – landlord that the Applicant has ample premises in his possession. The learned Civil Judge has reproduced a list of properties of the Applicant in paragraph 32 of the judgment which clearly indicates that the Applicant has sufficient alternate accommodation. The learned Counsel for the Applicant submitted that these properties are in the name of the sons of the Applicant. The Applicant has not chosen to examine any witness in that regard. The properties are showing the name of the Applicant. Therefore, it is clear that the hardship would be greater to the Respondent – landlord if decree is denied.

4. As regard the acquisition of the additional premises are concerned, a compromise has been entered into between another tenant and the Respondent – landlord during the pendency of the present appeal. There could be various reasons why the matter could be settled between the parties. Because the matter amicably resolved in some other matter, the benefit of a decree in the present case cannot be withdrawn. The learned District Judge has rightly noted that whether the premises which were handed over by the other

tenant were suitable and what was its condition was not brought on record. Without this evidence being brought on record, an inference could not have been drawn that the need of the Respondent – landlord stood satisfied. Any absence of evidence led by the Applicant, there is no perversity in the finding rendered by the learned District Judge. Apart from this position, it is always for the landlord to choose the premises and considering the number of members in the family, it is not unreasonable to expect larger premises for starting a business.

5. In the circumstances, there is no error of jurisdiction neither any perversity in the impugned orders. The appreciation of evidence cannot be interfered with, as view taken by both the Courts is a possible view. The Civil Revision Application therefore cannot be entertained and is rejected.

(N.M. Jamdar, J.)