

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

CIVIL REVISION APPLICATION NO.1001 OF 2014

Shri. Pratapgir Keshavgir Gosavi

.. Applicant

Versus

Shri. Subhash Motilal Mutha

.. Respondent

Mr. P. N. Joshi, for the Applicant.

CORAM : R.M. SAVANT, J.

DATE : 5th FEBRUARY 2016

PC.

1. The Revisionary Jurisdiction of this Court is invoked against the order dated 19.06.2014 passed by the Learned District Judge-2, Niphad, Taluka Niphad, District Nashik, by which order, the Appeal filed by the Applicant being Regular Civil Appeal No.53 of 2006 came to be dismissed and resultantly, the dismissal of the suit by the Trial Court by judgment and order dated 12.04.2006 came to be confirmed.

2. The Applicant herein is the original Plaintiff who had filed the suit in question for eviction of the Respondent/tenant from the suit premises which is a shop admeasuring 23 ft. X 11 ft. The said shop was let out to the Respondent for commercial purposes. The eviction of the tenant was sought on three grounds i.e. arrears of rent, bonafide requirement and

change of user.

3. The suit was preceded by the notice which was issued to the tenant dated 28.06.2000 which was received by the tenant on 30.06.2000. The said suit was filed on 02.09.2000. In view of the non-compliance of the said notice that the suit in question came to be filed. The suit was founded on two other grounds also, namely bonafide requirement and change of user. The bonafide requirement shown was that of the two sons of the Plaintiff one of whom was working in the MSRTC. It seems that the other son was jobless. In so far as the ground of change of user is concerned, the eviction was sought that though the suit was let out for carrying out business in automobile parts, the defendant had started the business of selling of batteries and that the acid of the batteries had an adverse effect on the premises and in fact was damaging the premises. The suit in question was dismissed by the Trial Court and all the three grounds were dealt with by the Trial Court in its order. The Trial Court did not countenance the said three grounds urged on behalf of the Applicant/landlord having regard to the material on record. The Trial Court in so far as the ground of arrears of rent is concerned held that the suit was not maintainable as the same was filed prior to the period of 90 days as envisaged by Section 15(2) coming to an end and was therefore pre-mature. In so far as the ground of bonafide requirement is concerned,

the Trial Court adjudicated upon the said issue on the basis of the position as on the date of the filing of the suit. Towards the said end, the Trial Court referred to the evidence of the Plaintiff Shri. Pratapgir Gosavi, wherein the Plaintiff has stated that apart from Shop No.5 in respect of which he has obtained a decree, the Plaintiff is in possession of three other shops in the same building which have been kept locked. It is on the basis of the said evidence that the Trial Court came to a conclusion that the need of the Plaintiff could not be said to be reasonable and bonafide and accordingly did not countenance the said ground. In so far as the last ground of change of user is concerned, the Trial Court negated the said ground on the basis that the Defendant was still carrying out the business of automobile tyres and that he was also carrying out business of batteries, but no material was placed on record by the Plaintiff to show that the acid of the batteries was damaging the suit premises. The Trial Court as indicated above has accordingly dismissed the suit by judgment and order dated 12.04.2006.

4. The Plaintiff carried the matter in appeal by way of Regular Civil Appeal No.53 of 2006. The Lower Appellate Court has on a re-appreciation of the material on record did not find it fit to differ with the findings of the Trial Court so as to interfere with the order passed by the Trial Court. The Lower Appellate Court has revisited the evidence which

was on record and also considered the findings of the Trial Court on all the three grounds which were urged on behalf of the Plaintiff/landlord and has accordingly dismissed the Appeal.

5. Hence, there are concurrent orders passed by the Courts below based on the findings of fact recorded by them in respect of three grounds. The Learned Counsel appearing on behalf of the Petitioner was at pains to argue that the issue of bonafide requirement has not been properly dealt with by the Courts below and that the Plaintiff/landlord has an absolute right in respect of the premises in question and it would not be open for the Courts below to delve into the aspect as regards the need of the sons of the Plaintiff etc. In my view, it is not possible to accept the contention urged on behalf of the Learned Counsel for the Petitioner especially in the teeth of the fact that the Courts below have carried out the exercise of considering the need of the Plaintiff as on the date of the filing of the suit on the basis of the material which has come on record. It is well settled that the need of the Plaintiff has to be reasonable and not fanciful. In that view of the matter, no case for interference is made out. The Civil Revision Application is accordingly dismissed.

[R.M. SAVANT, J]