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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.605 OF 2016

Dineshchandra Jethalal Joshi

..Petitioner.

V/s.

Kailash Eknath Gavli

..Respondent.

Mr.B.K.Raje for the applicant.

Mr.Rahul Kadam for the respondent.

CORAM : N.M. JAMDAR, J.

DATED : 6TH DECEMBER, 2016

ORAL ORDER

By this Revision Application, the Applicant has challenged the judgments and orders passed by the District Judge, Kalyan and Civil Judge, J.D., Kalyan thereby decreeing the suit filed by the respondent-plaintiff on the ground of bonafide requirement.

2. The suit No.364/1999 was instituted by the Respondent-landlord for possession of the suit property which is a shop gala consisting of two rooms and one residential room in Kalyan City. It is the case of the respondent-landlord that the applicant did not pay the rent and has not used the premises and

that the premises were bonafide required for his personal use for expansion of Sweets business and for residence for his workers. It was also pleaded that the property was required to be demolished to reconstruct a new premises to expand the business. The learned Civil Judge accepted the case of the respondent-landlord and has held that the premises was bonafide required by the respondent-plaintiff and greater hardship would be caused to the respondent-plaintiff if the decree is refused accordingly decreed the suit by judgment and decree dated 4 April, 2007. Appeal No.68/2007 was filed by the Applicant which was dismissed by the learned District Judge, Kalyan by judgment and order dated 10 August, 2016.

3. Heard the learned counsel for the parties.

4. The learned counsel for the applicant submitted that 1000 sq. ft. area is available nearby the premises and this fact has not been considered by the Courts. He relied upon the statement made in evidence in the cross-examination of the Respondent. The learned counsel for the Respondent, on the other hand pointed out that there is no specific pleadings in the written statement that there is 1000 sq. ft. area available. It was open to the Applicant to demonstrate that an independent premises were available to the respondent-landlord admeasuring 1000 sq. ft. It is now sought to be contended that 1000 sq. ft. area is available in the suit premises itself and that during the pendency of the appeal, the suit filed by the Respondent-landlord against the uncle of the

Applicant for possession of the two rooms in the suit premises, has been decreed. However, what is to be seen is the nature of requirement that has been upheld by both the Courts. Both the Courts have taken note of the fact that initially the business of selling sweets was started as a family business, which has now become a family owned private company, and this family business which is sought to be expanded, considering the growing number of the family members. It is also held that it is in this locality that the respondent-landlord initially started the business of selling sweets and has acquired a goodwill. The premises from which business was being run earlier from this area has been demolished by the Municipal Corporation for the purpose of road widening. It is for the purpose of relocating the said business and starting the same from the original area that the respondent-landlord has sought possession of the premises. It is placed on record that there are 23 workers and for preparation of sweets, a kitchen and storage will have to be erected nearby so also for the residence of the workers. This need, which has been upheld by both the Courts, cannot be said to be not bonafide or unreasonable. Unless the premises in possession of the applicant are handed over, it is not possible for the respondent-landlord to utilise the entire premises. Therefore, merely because the rooms which have been obtained from the uncle of the applicant are not being utilised, will not further the case of the applicant.

5. The learned counsel for the respondent pointed out that other premises from which other shops are being conducted

by the respondent are taken on leave on licence basis. That branches are opened in other areas of the city will not make difference to the need of the respondent-landlord to start the business from the area where it has acquired a goodwill, therefore, it cannot be said that the view taken by both the Courts is an improbable view or that the appreciation of evidence is perverse. The findings of fact in favour of the landlord has to be upheld. In the circumstances, no case is made out for exercise of revisional jurisdiction. The Revision Application is accordingly rejected.

6. The learned counsel for the applicant seeks continuation of the ad-interim order dated 21 October, 2016. Considering the facts and circumstances, I am inclined to grant six weeks time to the applicant. However, since time will be taken to get the certified copy of the order, the ad-interim order is extended for a period of eight weeks from today on the same terms and conditions.

(N.M. JAMDAR, J.)