

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

CIVIL REVISION APPLICATION NO.24 OF 2016

Mrs. Devika Subash Roy : Applicant.
Versus
Ms. Pushpa Punjabi : Respondent.

Mr. V S Kapse with Mr. Ajit J Kenjale and Mr. Rajesh Dharap for the Applicant.

Dr. Birendra Saraf with Mr. Ashish Kamat and Ms Pooja Kothari, Mr. Robin Feranandes i/by M/s. Federal & Rashmikant for the Respondent.

CORAM : R. M. SAVANT, J.
DATE : 11th February 2016

P.C.

1 The revisionary jurisdiction of this Court is invoked against the order dated 04/09/2015 passed by the Appellate Bench of the Small Causes Court Mumbai by which order the Appellate Bench of the Small Causes Court has dismissed the Appeal filed by the Applicant being Appeal No.180 of 2015 and thereby has confirmed the judgment and decree dated 27/03/2015 passed by the Trial Court i.e. the learned Judge of the Small Causes Court, Mumbai. Therefore there are concurrent orders passed by the Courts below against the Applicant herein and in favour of the Respondent herein.

2 The Respondent herein is the original Plaintiff and the Petitioner herein is the original Defendant to the suit in question being R.A.E. Suit

No.219/347 of 2012. The said suit has been filed by the Plaintiff for the eviction of the Petitioner herein i.e. the original Defendant from the suit property which is flat No.10 on the 2nd floor of the building, Block No.5, Navjivan Co-operative Housing Society Ltd situated at Bhagwansingh Colony, 172, Tulsi Pipe Road, Matunga (West), Mumbai 400 016. The ground on which the eviction is sought is the bonafide requirement of the Plaintiff on account of one Navin Thakur and his sisters Priya and Hema. The said three persons are the nephew and nieces of the Plaintiff. It is the case of the Plaintiff that she has two brothers viz. Mahesh and Prakash. Mahesh has permanently shifted and settled abroad at Chile. Prakash and his wife have followed him and are presently residents of Chile. Since Prakash and his wife wanted their children Priya, Navin and Hema to be brought up in an Indian atmosphere and culture, he put them in the care of the Plaintiff. The Plaintiff is admittedly a spinster and has adopted Hema who is the younger sister of Priya and Navin. The Plaintiff is accordingly residing with the said 3 children in the flat at “Nivara” building, 36, Mogul Lane, Mahim, Mumbai – 400 016 which accommodation comprises of two bed rooms and a hall. It is the case of the Plaintiff that she shares one bed room with Navin and the other bed room is shared by Priya and Hema. It is the case of the Plaintiff that whenever Prakash visits India, he occupies one bed room and resultantly his two daughters Hema and Priya have to shift to the drawing room and sleep there. At this stage it would be apposite to refer to the ages of the 3 children. Priya at the relevant

time when the suit was filed was 27 years old. Navin was 25 years old and Hema was 19 years old. It is further the case of the Plaintiff that Priya does not intend to get married. In so far as Navin is concerned, it is the case of the Plaintiff that she and Prakash have been looking out a bride for him, however, the marriage proposals have been rejected by the prospective bride's families on the ground that Navin does not have any independent accommodation. This has had an adverse effect on Navin who at times is suffering from depression. Hence it is the case of the Plaintiff that she requires the suit premises for re-locating Priya, Navin and Hema and herself. It is further the case of the Plaintiff that the son of the Defendant viz. Samitabh Roy was the A.G.M. in a company/firm known as Accentual Human Resource Department at Pune and thereafter is now working in W.N.S. Company in Pune and has settled there and has a three bedroom flat. It is the case of the Plaintiff that the said Samitabh Roy takes care of his mother i.e. the Defendant and therefore the Defendant had suitable residential accommodation and no hardship would be caused to the Defendant if the decree of eviction is passed.

3 The Defendant filed her written statement. She denied that the Plaintiff was residing along with Priya, Navin and Hema in the flat in Nivara Building. It is also her case that she does not have the financial capacity to purchase alternate accommodation in Mumbai. It is her case that in so far as Navin is concerned, the obligation is that of his father Prakash to provide the

accommodation to him, and therefore, the case of bonafide requirement of the Plaintiff cannot be on the basis of Navin's requirement. It is further her case that after she received notice of the suit inspite of her best efforts she could not even find any suitable accommodation for residence in Mumbai.

4 The parties led evidence in assertion of their respective cases. The Plaintiff examined herself and 3 others in support of her case. The Defendant led her own evidence in support of her assertion.

5 The Trial Court on the basis of the evidence on record came to a conclusion that the present accommodation in which the Plaintiff and 3 children i.e. Priya, Navin and Hema are residing is inadequate resulting in they are residing in a cramped manner and therefore came to a conclusion that requirement put forth by the Plaintiff for re-locating of the family members is reasonable and bonafide. The Trial Court further held that the Plaintiff is a spinster who is residing with the said 3 children and therefore are one family living under one roof. The Trial Court held that the Plaintiff can be said to be dependent on Prakash and Navin. The contention raised by the Defendant doubting joint residence of the Plaintiff along with the said 3 children was rejected by the Trial Court on the basis of the documents on record which were inter alia Exhibit 20 the ration card, Exhibit 27 bonafide certificate and Exhibit 22 the adoption deed of Hema whereby she has been adopted by the Plaintiff.

The Trial Court also rejected the contention of the Defendant that Navin had shifted permanently to Chile. The Trial Court held that mere casual stay or intermittent visits by Navin to Chile cannot be equated with permanent residence. The contention raised on behalf of the Defendant that the 3 children Priya, Navin and Hema were not examined though the eviction is sought on their requirement was also rejected by the Trial Court as the Plaintiff had deposed in respect of the said requirement and her evidence has not been shattered or impeached in any manner. The Trial Court relied upon the judgment of a learned Single Judge of this Court and held that it is not for the Defendant to advise the landlord as to how he should satisfy his need by advising him to go to other premises. The Trial Court therefore concluded that the Plaintiff has proved that she needs the premises for re-location of herself and 3 children Priya, Navin and Hema and therefore the Plaintiff bonafide requires the suit premises for the use of the persons and requirement of her family members.

6 In so far as the issue of hardship is concerned, the Trial Court answered the said issue in favour of the Plaintiff. The Trial Court held that if the decree of possession was not passed it would result in greater hardship to the Plaintiff as the accommodation available to the Plaintiff was not sufficient to accommodate Priya, Navin and Hema and that the marriage of Navin could not be solemnized in view of the inadequacy of the accommodation. The Trial

Court held that on the other hand the evidence discloses that son of the Defendant Samitabh Roy was working as A.G.M. In Accentual Human Resource Company and now he is holding an executive post in W.N.S. Company, Pune. It has also been brought on record that the relations between the Defendant and her son are good and that her son was looking after her and therefore the Defendant can be easily accommodated in her son's flat at Pune. The Trial Court therefore observed that even if the decree of eviction is passed, the Defendant would not be shelter-less as she can reside with her son. The Trial Court as indicated above by the judgment and order dated 04/09/2015 decreed the suit.

7 The aggrieved Defendant carried the matter in Appeal by filing Appeal No.180 of 2015. The Appellate Bench of the Small Causes Court on re-appreciation of the material on record re-iterated the findings of the Trial Court on the aspect of bonafide requirement as also hardship and confirmed the decree which was passed by the Trial Court. As indicated herein above there are therefore concurrent orders passed by both the Courts below in favour of the Plaintiff and against the Defendant.

8 The learned counsel appearing on behalf of the Applicant i.e. the original Defendant Shri Kapse would contend that the additional evidence on record proves that Navin has shifted to Chile and therefore the requirement of

the Plaintiff on the basis of Navin's requirement cannot be sustained. The learned counsel also sought to draw this Court's attention to the evidence on record to buttress his said contention that Navin has not been residing in Mumbai after the year 2010, as it is the case of the Plaintiff that it is only on Navin's requirement that the suit in question has been filed.

9 Per contra, the learned counsel appearing on behalf of the Respondent – the original Plaintiff Shri Saraf would support the orders passed by the Courts below. It was the submission of the learned counsel for the Respondent that the case pleaded in the plaint is not only for the requirement of Navin but also for the requirement on account of the two sisters of Navin. The learned counsel sought to draw this Court's attention to the averments made in the plaint and especially paragraphs 5, 6 and 8. The learned counsel for the Respondent also sought to draw this Court's attention to the cross examination of the Defendant on the aspect of her financial wherewithal. It was the submission of the learned counsel for the Respondent that an amount of Rs.32020/- was being deposited in the Defendant's account till 28/03/2011. It was also the submission of the learned counsel for the Respondent based on the evidence on record that the son of the Defendant has sold the flat at Malad during the contemporaneous time at the time of filing of the suit.

10 Having heard the learned counsel for the parties, I have

considered the rival contentions. In so far as the contention of the learned counsel for the Applicant Shri Kapse that it is only on account of Navin's requirement that the suit was filed is concerned, in my view, the said submission is misfounded having regard to the pleadings in paragraphs 5, 6 and 8 of the plaint wherein the requirement is that of the Plaintiff along with the said 3 children. It is the specific case of the Plaintiff that the eviction is sought on the ground that she wants to re-locate herself along with the two daughters of Prakash or re-locate Navin. It is therefore not a case where the suit was filed only on the basis of the requirement of Navin. The requirement of Navin can be said to be highlighted in view of the fact that Navin's marriage could not be solemnized in view of inadequacy of the accommodation, however, the requirement is of the family so that they can all live comfortably and have cordial relations with each other which presently on account of the cramped accommodation is unlikely.

By an order passed today in Civil Application No.73 of 2016 the Applicant was permitted to rely upon the documents which are annexed to the Civil Application.

11 In so far as the contention based on the additional evidence is concerned, in my view, even if the said documents which are now sought to be brought on record by way of the said Civil Application are considered, they

would not materially affect the finding in so far as the case of bonafide requirement and comparative hardship is concerned. In fact the Courts below have adjudicated upon the requirement of the Plaintiff having regard to the case of the Defendant that Navin is now residing permanently at Chile. The Courts below have recorded a finding that casual visits or intermittent visits to Chile by Navin cannot be equated with his permanent settlement at Chile. It would have to be borne in mind that it is on account of lack of accommodation that Navin's marriage could not be solemnized and it is therefore quite possible that Navin at times goes to stay with his parents in Chile and thereafter return back. In any event the material on record does not disclose that there is any intention of Navin to permanently reside in Chile.

12 In so far as grant of Visa is concerned, since admittedly Navin has been visiting Chile, he requires Visa for the same, hence much cannot be attributed to the grant of extension of Visa to Navin. Similarly the medical certificates would also not aid the Applicant, as the said certificates disclose that the Applicant has undergone a shoulder surgery i.e. repair of left shoulder Rotator cuff tear in September 2013.

13 In so far as the exhibition held under the aegis of the Apparel Export Promotion Council (the AEPC) is concerned, it has come on record that Navin's father is in the Apparel Trading business in Chile and had in the said

capacity participated in the exhibition/fair which was under the aegis of the AEPC. Obviously Navin was representing his father's firm and the said fact cannot be interpreted to mean that Navin has permanently shifted to Chile.

14 Both the Courts below, as indicated above, have recorded a finding of fact as regards the issue of bonafide requirement. In so far as hardship is concerned, it is required to be noted that the case was sought to be put up by the Defendant that her only income is out of the fees which she earns from conducting music classes in her flat. The fact that an amount of Rs.32020/- was being credited in her account by way of license fee of the Malad flat was not stated by her. Significantly the deposit of the said amount of Rs.32020/- was stopped after 28/03/2011 i.e. during the contemporaneous time when the suit notice was issued. The said fact therefore proves that the deposit was stopped so as not to affect the defence that would be required to be taken by the Defendant in the suit. It is also required to be noted that the son of the Defendant is holding a senior position in the company in which he works, and therefore, it cannot be said that the Defendant is without any financial support or would be shelter-less if the decree of eviction is passed as it has come on record that the son of the Defendant has a 3 bed room flat in Pune. Hence even the issue of comparative hardship would have to be held in favour of the Plaintiff having regard to the evidence which has come on record.

15 In so far as the concurrent orders passed by the Courts below are concerned , in my view, it cannot be said that the said orders suffer from any error of jurisdiction or any other illegality or infirmity for this Court to exercise its revisionary jurisdiction. The above Civil Revision Application is accordingly dismissed.

16 At this stage the learned counsel appearing for the Applicant Shri Kapse prays for the stay of the decree for a period of 8 weeks from date. The said prayer is opposed on behalf of the Respondent, and it is contended that the Applicant be put to terms in the event stay is granted. In the facts and circumstances of the present case, the said decree is stayed for a period of 8 weeks on the condition that the Applicant files the usual undertaking in this Court within a period of 2 weeks from date and the Applicant deposits a sum of Rs.50,000/- (Rupees Fifty Thousand only) in this Court also within two weeks which is the compensation for the 8 weeks period calculated on the basis of Rs.25,000/- a month, this is on the basis that the learned counsel for the Applicant made a statement that the Applicant would deposit such compensation within the time frame stipulated by this Court for the said period of stay.

[R.M.SAVANT, J]