

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CIVIL REVISION APPLICATION NO.53 OF 2016

Shri Chandulal S/o. Sallulal Sharma,
aged 70 years, Occu.: Business,
R/o. C/o. Bhawani Hair Cutting
Saloon, Paliwal Bhavan, Gandhibagh,
Nagpur.

.... **APPELLANT.**

// **VERSUS** //

1. Umashankar S/o. Deochand Paliwal,
Aged 55 years, Occu.: Business,
 2. Yogesh S/o. Deochand Paliwal,
Aged 56 years, Occu. : Business,
- Both R/o. Paliwal Bhavan,
Gandhibagh, Nagpur.

.... **RESPONDENTS.**

Shri S.A.Mohta, Advocate for Appellants.

CORAM : Z.A.HAQ, J.
DATED : SEPTEMBER 15, 2016.

ORAL ORDER :

1. Heard Shri S.A. Mohta, advocate for the applicant/ original
defendant (tenant).

2. The tenant has challenged the judgment and decree passed by the trial Court and maintained by the appellate Court directing the eviction of the tenant from the suit premises on the ground that the tenant was defaulter in paying the rent and that the suit premises are required by the landlords for their bonafide need.

3. The submission on behalf of the applicant-tenant is that the subordinate Courts have committed an error in directing the eviction on the ground that the tenant had defaulted in paying the rent, overlooking the fact that after receipt of notice issued by the landlords requiring the tenant to pay the arrears of rent, the amount was deposited by cheque in the account of the landlords. As far as findings recorded by the subordinate Courts that the suit premises are required by the landlords for their bonafide need, it is argued that the subordinate Courts have failed to consider the evidence on record which shows that the landlords are having bigger premises available at Kamptee Road, Indora where the landlords can start the business of marble for which the suit premises are allegedly required by the landlords. It is submitted that during pendency of the proceedings, the landlords have inducted a tenant on the first floor above the suit premises and this shows that the need alleged by the landlords is not bonafide. It is further submitted that the tenant is not having any alternate accommodation to carry on his business and the finding recorded by the subordinate Courts that the son of the tenant is having his own shop where he is running a saloon is also not

proper as the tenant is having two sons and four grandchildren and the shop situated near Ram Mandir, Central Avenue Road is not sufficient for all the members of the family of the tenant to conduct their business. The learned advocate has pointed out the copy of the invitation card which shows that the landlords have started showroom of marble on 27th July, 2014. Relying on the copy of the invitation card and the other evidence on record on this point, it is argued that the need of the landlords does not survive after the landlords started showroom of marble on 27th July, 2014. It is submitted that the subordinate Courts have not appreciated these aspects and therefore, the judgment and decree passed by the subordinate Courts is unsustainable.

4. After examining the documents placed on the record of this petition, I find that the trial Court has considered all the relevant aspects while considering the claim of the landlords for grant of decree for eviction on the ground of bonafide need. The learned District Judge has independently appreciated the material on record and has recorded his findings in paragraph Nos. 51 and 52 of the judgment passed by him. Merely because the landlords own some other properties at Nagpur which admittedly are situated away from the suit property, it cannot be said that the need of the landlords is not bonafide. The subordinate Courts have recorded finding of fact that the landlords are running business in a block admeasuring 25 x 12 ft. on the ground floor of the building where the block occupied by the tenant is situated and that the premises in which the

landlords are running their business is insufficient and inadequate for their business. The invitation card on which the tenant has relied to show that the landlords have started showroom of marble on 27th July, 2014, in fact, supports the case of the landlords and shows that the business of landlords is flourishing and therefore, the finding recorded by the subordinate Courts that the landlords have proved their claim for bonafide need cannot be faulted with.

As the judgment and decree passed by the subordinate Courts on the ground of bonafide need of the landlords is maintained, I am not considering the challenge raised by the tenant that the findings recorded by the subordinate Courts that the tenant defaulted in paying the rent is unsustainable.

5. I do not find any patent illegality or error of jurisdiction which necessitates interference by this Court in the revisional jurisdiction.

The revision application is **dismissed**. No costs.

At this stage, the learned advocate for the applicant submits that the applicant may be granted one year's time to vacate the premises.

It will not be proper to consider the request of the applicant in the absence of the non-applicants/ landlords. However, considering the facts

of the case, specially the submission that the tenant is occupying the premises since last more than 50 years, the applicant/ tenant is granted three months' time to vacate, but on condition that the applicant/ tenant files an undertaking before this Court within two weeks stating that the applicant/ tenant will handover the vacant and peaceful possession of the suit premises to the landlords till 15th December, 2016.

If the tenant fails to file undertaking before this Court within two weeks, the non-applicants/ landlords will be at liberty to proceed with the execution and this protection will not continue.

The learned advocate for the applicant / tenant has submitted that the entire arrears of rent/ occupation charges till July, 2016 are paid. The applicant/ tenant shall continue to pay the occupation charges for every month till 15th December, 2016 in advance. The occupation charges for the month of August and September, 2016 shall be deposited till 30th September, 2016 before the executing Court. The occupation charges for the month of October, November and till 15th December, 2016 shall be deposited in the first week of the concerned month.

If the tenant commits any default in depositing the amount, the landlords will be at liberty to proceed with the execution.

JUDGE

Rraut..

CERTIFICATE

I certify that this order uploaded is a true and correct copy of original signed order.

Uploaded by : R.B. Raut, PS

Uploaded on : 28/09/2016.