

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 57 OF 2016

1. Suresh s/o Narayan Sharma
Age : 45 years, occup. Business,
2. Ramesh s/o Narayan Sharma,
Age : 57 years, occup. : Business,

Both R/o Afu Lane, Chalisgaon, .. Applicants/
Tq. Chalisgaon, Dist. Jalgaon Orig. Defendants

versus

1. Paramila d/o Mahadu Bhamre,
Age : 66 years, occup. Labour,
2. Bebi d/o Mahadu Bhamre,
Deceased,
Respondent no. 1 is the legal heir of Respondent no. 2
Respondent no. 1 R/o Afu Lane,
Chalisgaon, Tq. Chalisgaon, .. Respondents/Resp.
Dist. Jalgaon No.1 orig. plaintiff

Mr. Ravindra M. Deshmukh, Advocate for applicants
Mr. Raj Devdhe, Advocate h/f Mr. S.P. Brahme, Advocate for
respondent

CORAM : SUNIL P. DESHMUKH, J.
DATE : 3rd April, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned
counsel for parties finally, by consent.

2. Applicants-heirs of deceased defendant in regular civil suit no. 232 of 2001 filed by present respondents are before this court, aggrieved by judgment and decree passed by appellate court [Principal District Judge, Jalgaon] on 16-01-2016 allowing regular civil appeal no. 58 of 2009 filed by respondents herein-original plaintiffs taking exception to decree of dismissal by trial court [civil judge, junior division, Chalisgaon] of their aforesaid suit seeking eviction of defendant on 23-01-2009.

3. The plaintiffs who are two real sisters, one of whom suffered epilepsy, had been before trial court under aforesaid regular civil suit no. 232 of 2001 seeking decree of eviction of original defendant who is now represented by his sons - present applicants from suit premises comprising 10' x 10' dimension room, *inter alia*, on the ground that suit premises are required by the two sisters reasonably and *bonafide* for personal occupation correspondingly claiming, greater hardship would be caused to them if eviction is not ordered, suit premises having become dilapidated and those cannot be rebuilt/repared without defendant vacating the same. Suit was preceded by a notice to defendant at the instance of

plaintiffs, additionally, on the ground of commission of default by defendant.

4. Defendant opposed the claims, averring that plaintiffs - two sisters do not require suit premises reasonably and *bonafide*. He has been running a grocery shop in suit premises. He does not have any other property, income from the shop is the principal source of livelihood. The plaintiffs have with ulterior motive caused demolition of structure in defendant's possession. He was compelled to repair roof of suit shop and that he was forced to pay rent at enhanced rate of Rs.200/- with increase of Rs.50/- per month.

5. Trial court had framed issues as to whether tenancy of defendant can be said to have been terminated under the provisions of the Maharashtra Rent Control Act; whether suit premises are required reasonably and *bonafide* by plaintiffs; to whom greater hardship would be caused; whether the plaintiffs prove suit property to be in dilapidated condition and defendant is liable to be evicted. The trial court adjudged that plaintiffs have not been able to prove that the suit premises are required by them reasonably and *bonafide* and finding is recorded, though greater hardship would be caused

to the plaintiffs, the premises would be required to be evicted by the defendant in order to enable the plaintiffs to carry out repairs, further recording a finding that suit premises had become dilapidated and, dismissed plaintiffs' suit.

6. Plaintiffs carried the matter before district court in regular civil appeal no. 58 of 2009. The district court had framed points for determination as to whether notice terminating tenancy had been necessary, recording finding in the negative. The appellate court further observed that with reference to compromise Exhibit – D, the plaintiffs may not be able to lay claim to possession, however, so far as other grounds for eviction are concerned, viz; reasonable and *bonafide* requirement of plaintiffs of suit premises and about comparative hardship being suffered, held that the plaintiffs' requirement is reasonable and *bonafide* and they would suffer greater hardship, further holding in plaintiffs' favour additional point about suit premises being required by the plaintiffs for repairs which could not be carried out without the room being vacated. Thus, the appeal is allowed accordingly.

7. Learned counsel Mr. R. M. Deshmukh, appearing on behalf of the applicants – heirs of deceased defendant

contends that for about 55 years, defendant had been carrying on business over suit premises forming his principal source of income. The defendant had been an old man. He further submits that plaintiffs have caused demolition of upper floor structure which had been available to plaintiffs for occupation and they had been after the defendant seeking possession of suit premises. He submits that defendant had no other accommodation available for carrying on business. Plaintiffs have some portion behind suit premises for occupation and may have certain other properties. He further purports to point out an element of discord which had been subsisting for quite some time between two sisters-the plaintiffs.

8. He submits, appellate court so far as other grounds are concerned, almost concurred with the findings of trial court albeit held that a notice may not be necessary. Mr. Deshmukh submits that the findings recorded by the two courts hitherto are conflicting and as such revision deserves to be considered favourably and reversal of finding of the trial court by the appellate court in respect of requirement of the plaintiffs being reasonable and *bonafide* and comparative hardship in favour of plaintiff deserves to be set aside.

9. In the circumstances, according to the learned counsel, reversal by appellate court of finding recorded by trial court in respect of requirement and desire of plaintiffs not being reasonable and *bonafide* is untenable and cannot be said to have been supported by any material. He, therefore, urges to allow the civil revision application.

10. Learned counsel Mr. Devdhe, appearing for respondents – plaintiffs submits that the judgment and discussion in the same as a whole and its tenor more than sufficiently brings forth that need of plaintiffs to occupy suit premises has not only been reasonable and *bonafide* but the same is genuine. He submits, perusal of judgment of trial court would evince that one room premises occupied by the two sisters had crumbled down and plaintiffs had to go to some other place and submits, although it is contended on behalf of the applicants that there is area available behind suit premises, yet no evidence in said respect had come forth before the court. Aforesaid apart, he submits, on defendant's own showing, the condition of said premises being dilapidated has become established fact. The defendant had not been in a position to show that plaintiffs had any other accommodation available

save suit premises. On the other hand, it emerges that defendant had some other property in weekly market of Chalisgaon and he draws attention to that said premises are of larger size than suit premises. He, therefore, submits that although effectively suit has been dismissed, observations and the finding recorded, to a large extent, show that plaintiffs had claimed eviction of the defendants on the grounds referable to section 16 (g) and 16(h), coupled with that the plaintiffs' need is supported by the provisions of section 16(2) of the Act. He submits that dismissal of the suit was an error committed by the trial court. As a matter of fact, upon observations by the trial court, suit ought to have been decreed. He submits that error committed by trial court has been corrected by appellate court for all right reasons and on the established evidence.

11. Having heard learned counsel as aforesaid, perusal of the judgment by trial court and the one by appellate court, it would appear, observations therein are pointer to that plaintiffs have more than sufficiently discharged burden of proof of their requirement to be reasonable and *bonafide* and the same is corroborated and reinforced to some extent, by the evidence of defendant himself. The discussion with regard

to discrepancies noted by trial court has little relevance so far as the object underlying suit is concerned. That can hardly be said to take away the need of plaintiffs of suit premises. It has emerged on record that the only room occupied by the plaintiffs had crumbled and came down and they had to leave the property owned by them. It does not appear, any evidence was brought forth by defendant to indicate that any alternate premises being available for occupation of plaintiffs. The only premises under the circumstances available to plaintiffs were suit premises in occupation of defendant which too had been dilapidated. So far dilapidated condition of the property is concerned, the parties are not divergent.

12. In the circumstances, consideration by trial court about need of plaintiffs being not reasonable and *bonafide* had been a fragile consideration and mistake which has occurred at the trial stage has been corrected at appellate stage. Appellate court while giving its findings has made observations in paragraphs no. 19, 20, 21, 22 and 25 as reproduced herein below,

" 19) In his cross examination the defendant Narayan Sharma admitted that on the upper floor of suit property the appellants used to reside and because portion in their possession had

crumbled, they were no longer residing there. He has further stated that because the appellants required the suit room, they had filed the suit. Subsequently he qualified this statement by adding that behind the suit property, property of the appellants was there. Thus, he implied that the appellants could utilize said property for their residence. The trial Court did not accept contention of the appellants that they required the suit room reasonably and bona fide for their personal occupation primarily on the ground that there was some variance between what they had pleaded in plaint para 3B and what appellant No. 1 had stated before the Court. This variance was only on the point of nature of terms between the appellants. They pleaded that their terms were strained. On the other hand, appellant No. 1 conceded that their terms were cordial and they intended to manage their affairs jointly.

20) *It was argued by advocate Mr. R. D. Paranjape for the appellants that the trial court ought to have taken into account entire material on record on the point of bona fide requirement of the appellants instead of solely relying on aforementioned variance between pleadings and proof. It was further argued that while considering question of bona fide requirement the trial Court did not take into account legal position crystallized by binding precedents. In support of this submission reliance was placed on following rulings :*

I] Shri. Noshir Jehangir Postwalla Vs. Shri. Keki Tattanji Postwalla (2000 Bom. R. C. 44].

In this case, it is observed :

" It has been held in the recent judgment of the Supreme Court in the case of Raghunath G. Panhale (Dead) V Chaanlal S & Co., 2000 Vol. 102 [1] Bom. L.R. 95 (S.C.) as follows :

" The word requirement coupled with the word reasonable means that it must be something more than a mere desire but need not certainly be a compelling or absolute or dire necessity. "

It is further held in the said case as follows :-

" A reasonable and bona fide requirement is something in between a mere desire or wish on one hand and a compelling or dire or absolute necessity at the other end. "

2] Balwant P. Doshi Vs. Shantaben Dhirajlal Shah and another (2002 Bomb. R.C. 516].

In this case it is held :

" It is well settled that the courts cannot ordinarily doubt the bona fide need of the landlord nor the courts can dictate to the landlord as to how the premises owned by him should be used. It is sufficient for the landlord to express his desire to occupy the premises which are owned by him. It is not necessary for the landlord to establish the dire necessity but it is enough to show that some need exists. "

3] *Rameshwar Nanakram Prajapal vs. Sundrabai Keru Ghadage* (2003 (2) Mh. L. J. 178 (Bom))

In this case, it is observed :

" The Hon'ble Supreme Court had occasion to consider the said point in the case of Prativa Devi (supra) and held that ; " it is well settled law that the landlord is the best judge of his residential requirement and has a complete freedom in the matter. It is no concern of the courts to indicate to the landlord how and in what manner he should live or to prescribe for him a residential standard of their own. "

It was argued by advocate Mr. R. D. Paranjape for the appellants that not only appellant no. 1 stated about bona fide requirement, defendant Narayan Sharma also accepted this position though he subsequently tried to wriggle out of it and considering entire material on record on this point as well as legal position laid down in above referred rulings, findings recorded to the contrary by the trial court cannot be sustained. In reply, it was submitted by advocate Mr. M. B. Jadhav for the respondents that the main ground on which the appellants tried to support their prayer for possession of suit room was strained terms between the appellants and since appellant no. 1 expressly admitted that their terms were cordial no fault could be found with the conclusion reached by the trial court that the appellants had failed in proving their bona fide requirement. I have referred to various other circumstances which have come on record viz. the portion which was in the possession of the appellants had come

down, they had shifted elsewhere and this was admitted by defendant Narayan Sharma. On consideration of entire material on record, I have come to the conclusion that the finding recorded by the trial court on the point of bona fide requirement of the appellants is contrary to record. Said issue ought to have been answered in favour of the appellants. Point no. 3 is accordingly answered in the affirmative.

21) As mentioned earlier, the trial court erred by clubbing issues 3 and 5 instead of issues no. 2 and 3. The trial Court answered issue no. 3 which was on the point of greater hardship, in favour of the appellants/plaintiffs. This finding was sought to be connected with finding on issue no. 5 regarding the appellants needing vacant possession of the suit room for the purpose of carrying out repairs (to the portion which was in their occupation). I have already quoted relevant provisions in para 17 of this judgment. There was absolutely no nexus between issue no. 5 and question of greater hardship which was covered by issue no. 3. Under the circumstances, question of greater hardship will have to be considered in relation to finding which is recorded on point no. 3.

22) The appellants pleaded that portion of suit property which was in their possession had crumbled and except the suit room, no other accommodation was available for them. Appellant no. 1 gave identical version in her examination in chief. In her cross examination she stated that suit room was the only space available to Narayan Sharma to run his shop and this was his only source of income. In this cross examination, Narayan

Sharma initially stated that because of his advanced age he was not doing any business. He then stated voluntarily that he used to work in his shop. He has further stated that portion situated on upper floor of suit property which was in the possession of the appellants' had come down and since then the appellants had shifted elsewhere. Though he claimed that behind the suit property there was another property of the appellants, he conceded that to support this assertion there was no material except his bare words. He further admitted that, at a spot where weekly bazaar is held at Chalisgaon, he owned property admeasuring 20 feet x 25/30 feet. According to him, to the south of said property there is hospital of Dr. Jain and adjacent to the hospital there is medical shop.

23) It was argued by advocate Mr. R. D. Paranjape for the appellants that on the basis of material on record, point of greater hardship will have to be answered in favour of the appellant. In reply, it was submitted by advocate Mr. M. B. Jadhav for the respondents that alleged admission given by Narayan Sharma regarding owning a property at weekly bazaar, Chalisgaon, is vague because there is nothing to show that the property referred to by the witness is having construction over it where he could run a shop.

24) It was argued by advocate Mr. R. D. Paranjape for the appellants that Narayan Sharma ought to have started search for alternative premises to run his shop after suit was instituted against him and since there is no evidence to show that he had taken such steps point of greater hardship will have to be

answered in favour of the appellants. In support of this submission reliance was placed on following rulings :

1) Narsinha Narayan Shirodkar Vs. Vasant Ganpat Shinde and another (1996 Bom. RC 152).

In this case, there was evidence to show that the tenant had not made any attempt to find out whether alternative premises were available or not. On the basis of such conduct, question of greater hardship was answered against him.

2) Suhasini Atmaram Parab & ors. Vs. B. H. Khatu and others (2003 Bom. R.C. 313).

In this case it is held ;

" The court has to take into account all the attending circumstances and if the tenant has failed to plead and prove the fact that it is impossible to get alternate accommodation in the same locality or for that matter in the same city then the issue will have to be answered against the tenant. "

25) It was argued by advocate Mr. R. D. Paranjape for the appellants that Narayan Sharma did not either plead or depose that he had taken search for alternative premises and on account of such conduct finding on the point of greater hardship is bound to go against him. It was pointed out that the suit was filed on 4-10-2001 and it was decided on 23-1-2009. Admittedly, there is no evidence to show that during pendency of the suit, Narayan Sharma had taken search for alternative premises for shifting his

shop. Taking into account evidence on record and legal position laid down in afore cited rulings, point no. 4 has to be answered in favour of the appellants. It is accordingly answered. " ,

which appear to be quite apt.

13. Appreciation by the appellate court is unimpeachable and does not call for any interception in the revisional powers.

14. Civil revision application, as such, stands dismissed. Rule stands discharged.

15. At this stage, Mr. R. M. Deshmukh, on behalf of the applicants urges for reasonable time for vacating suit premises, submitting that defendant had been and after him present applicants are in possession of the same for over fifty five years. Learned counsel for respondents – plaintiffs opposes the request, stating that for almost a year revision is pending.

16. Taking overall view, I deem it appropriate to grant some time to applicants to vacate suit premises, of course, on certain conditions.

17. Applicants to file requisite undertaking before this court that they would vacate suit premises within a period of six

months from today and no further extension of time for the same would sought by them. They shall further undertake that they would not create any third party right, title or interest or encumbrances of whatsoever nature in and/or over suit premises nor would they change nature of the property and further that they would continue to pay amount towards compensation for occupation of suit premises to the respondents-plaintiffs which shall be equal to the amount at the rate at which lease rent was being paid. Applicants shall undertake to give vacant possession of suit property peacefully and without any disturbance to the respondents at the end of six months or before. Undertaking to be filed within a period of eight weeks from today.

SUNIL P. DESHMUKH,
JUDGE

pnd