

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.147 OF 2016

Suresh Shankarrao Nagarkar
Age - 67 years, Occ - Business
R/o Jalgaon, District - Jalgaon

APPLICANT

VERSUS

Rameshwar Mohanlal Upadhyay
Age - 52 years, Occ - Service
R/o 144, Shani Peth, Jalgaon
District - Jalgaon

RESPONDENT

.....
Mr. Siddhartha B. Yawalkar, Advocate for the applicant
Mr. V. T. Chaudhary, Advocate for the respondent
.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 8th MARCH, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard learned advocates for the parties finally with consent.
2. It appears, respondent - landlord had initiated eviction proceedings against applicant - tenant bearing Regular Civil Suit No.13 of 2001 in the court of Civil Judge, Junior Division, Jalgaon on the grounds of nuisance, default in making payment of rent, non user and *bonafide* and reasonable requirement of suit premises for the respondent - plaintiff and his family members.

Dimensions of the suit premises are about 7' X 7'.

3. The two courts, trial as well as appellate, have negated case for eviction on the grounds of nuisance, default and non user, however, have decreed the suit on the ground of *bonafide* and reasonable requirement of the landlord and family members and finding landlord would suffer more hardship.

4. As such, challenge in present civil revision application is confined to the decree, passed by the trial court and confirmed by the appellate court, on the ground of *bonafide* and reasonable requirement of the landlord.

5. Mr. S. B. Yawalkar, learned advocate appearing for the applicant submits that assuming that requirement of the landlord was reasonable and *bonafide* at the institution of the suit, however, during pendency of proceedings, under occurrence of subsequent events, the contended need of the landlord got eclipsed and ceased to be *bonafide* and reasonable. He submits that the subsequent events were brought on record by amending written statement at the appellate stage and responded to by corresponding amendments to the plaint by the plaintiff. He refers to the contents of the amendments 6A and 6B to the written statement referring to that an adjoining premises,

vacated by some other person, were taken in possession and are being utilized for residential use rather than for business, as contended at the institution of the suit by the plaintiff. That apart, according to learned advocate two sons of the landlord have moved away from Jalgaon and were staying at Kalyan and Pune, respectively. For said purpose, he purports to rely on documents viz applications submitted by them for seeking mobile connections, which according to him clearly show that two sons, Vishal and Sandip, of the landlord were staying respectively at Kalyan and Pune. He purports to refer to certain observations with regard to photographs made by the appellate court and submits that the evidence sufficiently bears out that the landlord is no longer in need of the suit premises and as such, the finding and consequently the decree deserves to be set aside.

6. Mr. V. T. Chaudhary, learned advocate appearing for the respondent contends that the appellate court has referred to relevant aspects involved in the matter and on appreciation of evidence found that there is no cessation of need of the landlord for his family members, which is *bonafide* and reasonable. Learned advocate submits that two sons of the respondent had to be away from Jalgaon for earning purpose, since they were

not having suitable premises at Jalgaon readily available then. That apart, he submits that both the sons of the landlord are married and want to establish at Jalgaon. He further submits that what would be relevant to consider is the need on the date of institution of suit and the evidence as submitted on behalf of the applicant hardly would show that need of the landlord has got absolutely eclipsed. He further submits that even otherwise, two courts hitherto have recorded concurrent findings in respect of *bonafide* requirement of the landlord, which can hardly be said to be away from the evidence on record, requiring interference in the revisional power of this court. He, over and above, submits that the record further sufficiently bears out that the applicant is in possession of two more properties, one owned by himself and other tenanted property.

7. Having heard the rival contentions as aforesaid, appreciation by appellate court in respect of point No. 6 relating to reasonable and *bonafide* requirement of suit premises by landlord and family shows that all relevant considerations have been taken into account. Cross-examination of plaintiff's witness No. 1 shows that upon vacation of premises by "Trimurti Electrical" she had started running shop of cosmetics, which has been an admitted position. The court has taken into account

that there is no dispute regarding PW-1 running beauty parlour as well as shop of cosmetics over distinct portions of property and further to that said occupations are source of income for the family.

8. The appellate court has further considered that sons of plaintiff, Vishal and Sandip, had been out of town in search of employment, however could not secure employment and had come back to Jalgaon. They are residing in suit premises and working as commission agents in Dana Bazar, Jalgaon. Thus, the court appears to have considered that it would not be a case where it can be said that the need of the landlord has been got absolutely eclipsed. Further the court has also taken into account other aspect about one Khan was alleged to be tenant, however evidence shows that applicant had not stated anything about cycle repair shop run by Khan or even in his affidavit of evidence the applicant has stated nothing about said shop of Khan. Over and above, the plaintiff's witness has stated that apart from keeping some material in cupboard in eastern wall, Khan was not doing anything with the suit premises and that Khan was not being charged any rent and it was only a human and good will gesture that he was allowed to keep material in the cupboard. That apart, there appears to be no evidence with regard to Khan

being tenant.

9. Perusal of the appellate court's judgment particularly observations in respect of point No.6 about *bonafide* requirement of the landlord, would show that the appellate court has elaborately considered the relevant aspects.

10. In the circumstances, it does not appear that findings and decisions can be turned turtle under the revisional powers.

11. The civil revision application, as such, fails and is dismissed. Rule stands discharged.

[SUNIL P. DESHMUKH, J.]

drp/cra147-16