

**IN THE HIGH COURT OF JUDICATURE
AT BOMBAY**

BENCH AT AURANGABAD.

**CIVIL REVISION APPLICATION NO.163 2017
WITH
CIVIL APPLICATION NO.8931 OF 2017.**

Sayeed Hussain Sayyed Chand
since deceased through his
L.Rs. Sayyed Hafija Husain
since deceased (Legal heirs
are already on record i.e.
applicant Nos.1C,1D & IF)
and others. ... Petitioners.

Versus

Aminabi Shaikh Abdul Rahman
since deceased through her
L.Rs. Muktar Hussain Shaikh
Abdul Raheman (deceased
through L.Rs. Shaikh Chandbi
Muktar Hussain and others. ... Respondents.

...
Mr.V.P.Latange, advocate for the petitioners.
Ms.Fatema Kazi, advocate holding for Mr.S.S.Kazi,
advocate for Respondents.

...

CORAM : S.V.GANGAPURWALA, J.

Date : 18.09.2017.

PER COURT :

1. The present Respondent-landlord has

filed suit for eviction against the tenant-present petitioner. The trial Court decreed the suit and granted decree for eviction on the ground of bonafide requirement, so also that the defendant is causing nuisance and the property is in a dilapidated condition.

2. The tenant filed appeal before the District Court. The District Court partly allowed the appeal and set aside the decree of the trial Court to the extent it granted eviction on the ground of the suit premises being in a dilapidated condition and that the defendant is causing nuisance. However, confirmed the decree of eviction on the ground that the plaintiff-landlord requires the premises bonafidely and reasonably for her own occupation. Aggrieved thereby, the present Revision.

3. Mr.Latange, learned counsel for the petitioner/tenant submits that the decree passed by the trial Court is in fact an exparte decree. Though the written statement is filed by the petitioner, and the plaintiffs' witness is also

cross-examined but the defendant could not adduce his own evidence. As such the plaintiff could not bring on record the facts to the effect that plaintiff does not require the suit premises bonafidely and reasonably for her own occupation and that more hardship would be caused to the tenant if decree of eviction is ordered. According to learned counsel, the District Court ought to have afforded an opportunity to the petitioner to adduce the evidence. The learned counsel further submits that the plaintiff herself did not lead any evidence but the evidence is led through Power of Attorney holder who has no right to depose and whose deposition does not have any evidential value. This aspect has not been considered by the Court. The learned counsel submits that there is nothing on record to show that the family of the landlord consist of 15/16 persons. No proof of the same is brought on record. On the contrary, if eviction is directed then it will cause more hardship to the tenant. According to the learned counsel, the judgments of the Courts below deserve to be set aside.

4. Learned counsel for the Respondents/plaintiffs supports the judgments passed by the Courts below.

5. With the assistance of learned counsel for respective parties, I have gone through the judgments delivered by the Courts below.

6. The present petitioner/tenant after the judgment was passed by the trial Court had filed an application U/o IX Rule 13 of the C.P.C. for setting aside the exparte decree. The said application is rejected. The present appeal is also filed against the judgment and decree of the trial Court which has been considered on merits by the District Court. It would not be open for the petitioner now to contend ground of his absence in the trial Court for not adducing evidence. None the less, the appeal was required to be considered on merits and the same has been considered on merits by the District Court.

7. The District Court has confirmed the judgment and decree of the trial Court on the

ground of reasonable and bonafide requirement of the landlord.

8. The Power of Attorney holder of the landlord was none other than her son who was having the knowledge of the facts. As such his evidence is relevant and can be considered.

9. It has been observed by both the Courts that the family of the landlord consist of 15/16 members and they have only five (5) rooms in possession which is not sufficient for 15/16 members which includes her four sons and their family.

10. It has further been observed by the Court that in the evidence of the plaintiff, it has appeared that just two Kilometers from Ahmednagar city at Nalegaon, the defendant has constructed his house. During the cross-examination of the witness of the plaintiff, the defendant has not challenged the said statement that the defendant has constructed house at two Kilometers from Ahmednagar city at Nalegaon.

This would itself show that if decree of eviction is passed, hardship would not be caused to the defendant. It is trite that the landlord is the best judge of his bonafide and reasonable requirement. Considering the totality of evidence on record, both the Courts have concurrently arrived at the conclusion that the landlord requires the suit premises reasonably and bonafidely for his own occupation and that the hardship would be caused more to the landlord if decree for eviction is refused.

11. The Courts below have concurrently arrived at a plausible concision. In view of that, no case for interference is made out in the revisional jurisdiction of this Court.

12. At this stage, the learned counsel for the petitioner seeks continuation of the interim relief.

13. I grant petitioner three (3) months time to vacate the suit premises on condition that petitioner files undertaking to this Court

that the petitioner shall vacate the suit premises by 31.12.2017 and that no third party interest would be created and that he will pay amount due to the petitioner regularly till 31.12.2017. Such an undertaking shall be filed within two (2) weeks from today by all the petitioners. Failure to file an undertaking to this Court, the protection granted by this Court shall come to an end.

14. The Civil Revision Application is dismissed. No costs.

15. In view of disposal of Civil Revision Application, the Civil Application also stands disposed of.

(S.V.GANGAPURWALA, J.)

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