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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.189 OF 2016

Sunil Uttamchand Lahoti
Age - 51 years, Occ - Business
R/o In front of Kulkarni Hospital,
Rajendra Prasad Road,
Jalna

APPLICANT

VERSUS

Vijaykumar Gopikisan Bagdiya
Age - 63 years, Occ - Business
R/o Laxminarayan Oil Mill,
Rajendra Prasad Road
Jalna

RESPONDENT

.....
Mr. Satyajit S. Bora, Advocate for the applicant
Mr. P. P. More, Advocate for the respondent
.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 23rd JANUARY, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.
2. Regular Civil Suit No.371 of 2012 was initiated by the respondent - landlord seeking eviction of the applicant - tenant, primarily on two grounds. First, *bonafide* requirement of the landlord with a view to settle his two sons down on their own in

life, one of the sons being a civil engineer and the other being commerce graduate. One of the sons of the respondent - landlord has been engaged in construction material business and required the suit premises for storing material. The defendant - tenant on the other hand owns other properties in Jalna city and that greater hardship would be caused to the landlord than the ones which would be suffered by the tenant. The other ground for eviction had been default in making payment of rent @ Rs.5,000/- per month and that the tenant being in arrears of rent for about ten years and in the process, the tenant is in the arrears, amounting to about Rs.6,00,000/-. As relationship between the parties was cordial and under the assurances by the defendant - tenant, the suit had not been initiated immediately within the period prescribed under the Limitation Act and as such, purported to limit demand of arrears to preceding three years of institution of suit for the period from 1st February, 2009 to 28th February, 2012 amounting to Rs.1,80,000/-.

3. The landlord had issued a notice on 7th January, 2012 terminating tenancy and demanding arrears of rent. Said notice came to be replied by the tenant on 15th February, 2012 denying the claims under the notice.

4. The tenant, in defence, denied the quantum of rent @ Rs.5000/- per month. It was further claimed by the defendant-tenant that arrears up to December, 2011 had been paid, however, subsequently the plaintiff refused to accept the amount of rent and as such, the same was being sent by money orders, which were refused to be accepted by the plaintiff. As such, the allegation with regard to non compliance of the requirements of section 15 of the Maharashtra Rent Control Act came to be denied further denying the default being willful.

5. The trial court framed issues as to whether agreed rent had been of Rs.5,000/- per month; whether the defendant-tenant defaulted payment of rent for the period claimed by the plaintiff-landlord and whether the plaintiff reasonably and *bonafide* requires suit premises and to whom greater hardship would be caused in the case of passing or non passing of the decree, and holding the rent to be @ Rs.5,000/- per month, granting recovery of arrears of rent as claimed by the plaintiff and also holding that the landlord requires suit premises reasonably and *bonafide* and that landlord would suffer greater hardship than the tenant.

6. The trial court, while discussing quantum of rent has

adverted to that the plaintiff has in his deposition stated that pursuant to oral agreement, the agreed rate of rent had been Rs.5,000/- per month and the same being paid accordingly by the defendant up to December, 2001. However, from January 2002 to the date of suit, the defendant had defaulted payment of rent. The trial court further adverted to that the tenant in his deposition at Exhibit-40 has stated that quantum of rent had been Rs.500/- per month and not Rs.5000/- and that he has paid rent up to December, 2011 and thereafter the tender of rent had been by money orders, which the landlord has refused to accept. The defendant had stated that he had record of rent receipts, however, has not produced any document regarding the rent or any document indicating rent fixed between the parties. The trial court had been impressed by the tenant's statement that he was having a shop namely "Ganesh Ginning" which had been given on rent @ Rs.5,000/- per month. Said shop was having an area of 1600 square feet situated in the centre of the city. It went on to consider that since suit premises too were centrally located in the city and its market price as referred to in the order, and as such, it appears, had made a guess work that the rent of suit premises may be around Rs.5,000/- per month, since the defendant has not corroborated his version of rent

being Rs.500/- per month. The trial court has considered that the suit being instituted before expiry of the period pursuant to section 15 (2) of the Maharashtra Rent Control Act i.e. before expiry of period of ninety days, upon service of notice for eviction, and declined eviction on that ground. The trial court directed the defendant – tenant to pay rent arrears of Rs.1,80,000/- and further had directed to make inquiry for mesne profits pursuant to Order XX Rule, 12 (1) (c) of the Civil Procedure Code.

7. So far as ground of *bonafide* and reasonable requirement of landlord for the purpose of settlement of his two sons is concerned, the trial court considered that suit premises had been required by sons of the plaintiff and for storing material of construction and further that the defendant – tenant is having shop by name “Mahesh Decorators” at Rajendra Prasad road and also that the defendant was having a landed property close to suit premises. Relying on a citation in the case of “*Shankar B. Vadarigetkao V/s. Ganpati Appa Gatare*” reported in 2001 Vol. 103 (4) Bom. Law Reporter, 58, and quoting excerpts from the same, the trial court found that the plaintiff – landlord's need is *bonafide* and reasonable. The trial court referred to that although it is being contended on behalf of the defendant – tenant that the plaintiff –

landlord had several properties situated in the city, yet no material in this respect had been adduced before the court. The trial court, has considered that while there is absence of any material having been adduced in support of the contention of the defendant about other properties being available to the landlord and also that the defendant having certain other properties available, hardship had been considered would be suffered more by the landlord than the defendant. The trial court has referred to and relied on judgment in the case of “*Sulochanabai Kashinath Gajar V/s Smt. Krishnabai Daniram Ugavekar and Others*” reported in 2001 (4) ALL MR 45, with reference to that mere availability of other properties to the landlord does not prevent him from seeking eviction of tenant from suit premises on the ground of *bonafide* requirement. As such, the trial court decreed the suit directing eviction of the tenant.

8. The applicant – tenant, in the circumstances, had been in proceedings against aforesaid decree before District Court at Jalna bearing Regular Civil Appeal No.48 of 2015. The appellate court had framed points for determination as to what was contractual rate of rent, whether the plaintiff has proved default in payment of rent, whether plaintiff has proved *bonafide* requirement of suit premises, and to whom greater hardship

would be caused and considered that the contractual rate of rent had been Rs.5,000/- per month and there had been default by the tenant and the landlord had proved *bonafide* requirement and it is the landlord who would suffer greater hardship. The appellate court considered that the plaintiff has claimed in his deposition contractual rate of rent to be Rs.5,000/- per month and in his cross-examination he denied the suggestion that rate of rent had been Rs.500/- per month and that it has emerged that the tenant had failed to file on record rent receipts as contended by him. The appellate court further considered that the tenant has not been able to adduce any evidence in respect of his contention with regard to rate of rent being Rs.500/- per month. The appellate court appears to have been influenced by the tenant's statement in the cross-examination that he had given on rent @ Rs.5,000/- per month one shop premises namely "Ganesh Ginning" and that the suit premises are centrally located in the city and that he has neither paid nor deposited any rent in the court. The appellate court purportedly referred to section 55 of the Maharashtra Rent Control Act and appears to have considered that the same is applicable to tenancy agreement entered into after enforcement of Maharashtra Rent Control Act and the tenancy in dispute had

commenced before its enforcement. According to learned judge of the appellate court, in the circumstances of the case, presumption, a rebuttable one, stands rebutted by the landlord.

9. Since the appeal is dismissed, the defendant – tenant is before this court under present civil revision application.

10. Mr. Satyajit Bora, learned advocate appearing for the revision applicant urges and tries to persuade the court to indulge into request made under the revision to reverse decisions of two courts hitherto for, although the landlord had contended the suit premises being required for reasonable and *bonafide* requirement for settlement of his two sons, yet it would have to be taken into account that both the sons of the plaintiff – landlord are educated and were doing business on their own already. In addition to aforesaid, he contends that there are several other properties available to the landlord for the purpose as contended for settlement of his sons. In the circumstances, it will have to be adjudged that neither the need of the landlord – plaintiff is *bonafide* and reasonable nor it can be said that the landlord would suffer more hardship than the tenant in case of eviction is not ordered. He further purports to argue that the circumstances would indicate that it is deteriorating relationship

between erstwhile friends which has now turned sour and finds reflection in the institution of proceedings for eviction. Thus, learned advocate tried to impress upon that rather than *bonafide* need as is contended, it is rather the ego leading to machination of eviction proceedings.

11. Mr. Bora further goes on to submit that the trial court has rightly considered ground of eviction pursuant to section 15 of the Maharashtra Rent Control Act, being not available to the defendant at all, yet has committed an error in granting recovery of arrears of rent to the plaintiff at the rate as contended by the landlord. He contends that there is absolutely no basis whatsoever to consider save and except statement in the pleadings and uncorroborated deposition on behalf of the plaintiff. He further submits that the defendant's honest and naive statement with regard to rate of rent being fetched by his shop Ganesh Ginning is being used and utilized against his own interest while the landlord has miserably failed to adduce anything on record to bring any substance in his contention about the rent being Rs.5,000/- per month. He submits that except bare statement, there is nothing placed on record that while the tenancy commenced in 1992 or for that matter in 1997, rates of rent were in the region of the rates now being

demanded by the landlord. He submits that the courts hitherto have absolutely misdirected themselves as far as object and purpose underlying the provisions of section 55 of the Maharashtra Rent Control Act is concerned. As such, it was incumbent on the landlord to prove his demand of rent at the rate of Rs.5,000/- per month by producing evidence. He, therefore, submits that the decisions rendered by the two courts with regard to rate of rent are nothing but surmises and conjectures and / or assumptions and presumptions. He submits statement of the defendant with regard to rent being fetched by his shop is of little relevance so far as rent of suit premises is concerned. He, therefore, contends that rate of rent as contended by the tenant will have to be considered and shall prevail over looking at the object and purpose of section 55 of the Maharashtra Rent Control Act circumscribing area of controversy over the rate of rent.

12. Mr. P. P. More, learned advocate appearing for the plaintiff – landlord submits that both the courts are in unison in giving findings that the landlord requires the suit premises reasonably and *bonafide* as stated and averred by him and about rate of rent being Rs.5,000/- per month. It would be a case that the defendant has not been able to bring forth any material to

unsettle position emerging from the decisions given by the two courts. He submits that the trial court has elaborately discussed that the suit premises are required for settlement of two sons of the plaintiff – landlord who are educated and want to start business independently and for storing construction material. This need of the landlord according to learned advocate has not been countered except trying to take up a ground that greater hardship would be suffered by the tenant. He submits that the courts have referred to legal position prevailing that as far as need of the landlord is concerned, he is the best judge and it is not for the tenant to dictate as to which of the premises he should choose. He submits that the courts hitherto have rightly considered the rate of rent being fetched by premises in the similar situation being Rs.5000/- per month. The landlord has unequivocally referred to the rent to be Rs.5000/- being contractual rent and the same is sought to be combated by the tenant by saying the same to be Rs.500/-. He submits, the tenant had referred to that there are rent receipts which would be produced, however he has failed to do so. In the circumstances, from the evidence as has been placed on record, the two courts have viewed the matter from an angle where it appeared that the rent being claimed Rs.5000/- per month

appears to be proper. In the circumstances, only for the reason that other view is possible, findings recorded by the two courts would not be amenable to be upset in revisional powers of this court.

13. Having heard learned advocates for the parties submitting as aforesaid, one thing appears that so far as need of the landlord being *bonafide* and reasonable, findings recorded by the two courts concurrently, hitherto, does not appear to be impeachable. The landlord has come out with a case that the suit premises are required for settlement of his sons, who are educated and were intending to do business independently and the suit premises were required for storing construction material. This particular requirement has not been countered by the defendant – tenant. He, however, had tried to contend that other properties are available to the landlord in the city, wherein the purpose for which eviction has been sought can be satisfied. Although this is being so contended, the courts considered that the suit premises being thought suitable by the landlord for the need as has been expressed and it has been found to be *bonafide* and reasonable. Additionally, tenant appears to have some other properties in the city. As far as this aspect of the matter is concerned, it does not appear to be a case wherein

exercise of revisional powers is necessitated.

14. It will have to be kept at the back of the mind, save and except pleading and statement by the landlord, no corroborative material has been placed by the landlord on record to support his case about rate of rent. The courts hitherto have considered that since the rate of rent claimed by the tenant to be Rs.5000/- per month and further that he had expressed that there are rent receipts and had desired to produce the same, however, ultimately had not been able to produce, an inference may be drawn that the rate of rent fetched would be Rs.5000/- per month for the reason that the tenant had rented out his premises at said rate to a third person. It will be pertinent to refer to that when a person claims existence of a particular thing, primary burden is on him to prove the thing to be existing. An evidence of the other side in case of other thing would hardly be a reliable piece of evidence. The courts below have missed out on vital aspects with regard to controversy is that the tenancy commenced around 1992 or for that matter in 1997 as contended by the parties and that no material had been produced by the landlord about rate of rent prevailing over in 1992 or 1997 and what has weighed and influenced the court while adjudging the rate of rent at Rs.5000/- per month is the

tenancy which has commenced in 2009 and of an area almost double that of the suit premises. As such, the courts while giving finding on this issue appear to have engaged in guesswork rather than objective appreciation. The landlord does not appear to have been able to produce any credible material to evidence his claim being right. In the circumstances, rate of rent, which has been considered by the courts, appears to be a far fetched proposition and a subjective one. Rate of rent as has been considered by the two courts to be Rs.5000/- per month is concerned, the same appears to be, in the circumstances, rather too steep. Looking at the overall bearing of section 55 of the Maharashtra Rent Control Act the approach of courts appears to be digressed. There appears to be seldom any evidence on behalf of the plaintiff and much less any corroboration, save pleading and statement. In the circumstances, one will have to go by acceptance of rate of rent by the tenant which would be in tune with the object underlying statutory provision. As such, to that extent, it appears that the observations and findings given by two courts hitherto require to be modified and adjusted.

15. As such, decree of arrears of rent, as granted by the trial court and affirmed by the appellate court, is modified and figure of Rs.5000/- is substituted by figure of Rs.500/- and the arrears

of rent as granted will have to be computed accordingly. The decree, to that extent any, stands modified. It is made clear that eviction decree is maintained.

16. Civil Revision Application as aforesaid stands disposed of. Rule stands discharged.

[SUNIL P. DESHMUKH, J.]

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