

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 185 OF 2017
WITH
CIVIL APPLICATION NO. 119 OF 2017

Sudesh Shivram Sabni	...Applicant
<i>Versus</i>	
Nirmala Dattatraya More	...Respondent

Mr Yuvraj P Narvankar, for the Applicant.
Mr Abhijit M Adagule, for the Respondent.

CORAM: G.S. PATEL, J
DATED: 6th November 2017

PC:-

1. Heard.

2. The civil revision application is directed against an order dated 6th January 2017 of the appellate court in Kolhapur in Regular Civil Appeal No. 406 of 2013. By this order the appeal court confirmed the judgment and decree dated 4th September 2013 of the 2nd Joint Civil Judge, Junior Division, Kolhapur in Regular Civil Suit No. 770 of 2005.

3. The property in question in question is a house number CTS No. -2746, 'A' Ward, Wangi Bol, Kolhapur. The plaintiff owns the

house. A tenancy was created in 1982 in the name of a partnership firm Amba Electricals. At that time there were three partners. The name was slightly changed to Amba Electricals and Cassette House. The business continued, but defendant no. 2, Suresh Sabnis, said that after one of the partners died in 1995, the business continued with the remaining partners. The third partner Harishchandra Ashtekar retired in 1991 and since then it is the 2nd defendant who does business in the same name.

4. The real dispute was on the question of bona fide requirement. It is the case of the writ petitioner, the original defendant, that the owner's requirement is not genuine or bona fide. The plaintiff claimed to require the premises for a tailoring business for her son although the son was otherwise employed as an accountant. It is also argued that there were other premises that were available. Shop no. 2 was given on rent to one Pushpa Chavan by an agreement of 31st November 2003 for a three year period. That was extended periodically till 2009. The defendant argues that if the plaintiff genuinely needed space, that agreement with Pushpa Chavan ought not to have been renewed. The argument addresses itself to both the question of bona fide requirement and comparative hardship. It is also urged that there are other vacant premises where the plaintiff's deceased husband used to himself carry on a tailoring business and these are kept locked. It is therefore suggested that the entire action is *mala fide* and not genuine.

5. As against this, the respondent urges that the locked premises are actually occupied by another son Nitin who uses them to store

his goods and there is not space available there to start a tailoring business.

6. As to the question of renewal of the agreement, the plaintiffs' evidence before the trial court was candid; they said that they were compelled to renew that agreement because they needed money at that time. It is not, I think, plausible to argue that a person should have persisted with a litigation for eviction to the wholly uncertain outcome and the same time given up an assured source of revenue; at least the renewal resulted in some certainty of income. From this alone, it is difficult to conclude that the requirements stated and proved by evidence was not genuine.

7. It is also argued that no separate issue was framed on the question of comparative hardship. I find that the appellate court, in first appeal, found that the trial court has addressed the question of comparative hardship. It held that it makes little difference whether such issue is separately framed or not. In my view, the approach of the appeal court cannot be faulted on this aspect of the matter.

8. As to the question of bona fide requirement, the appeal court found on a careful consideration of the evidence and the applicable law that the trial court had considered the evidence in its proper perspective. It was urged by the defendant that neither the plaintiff nor her son had any knowledge of tailoring. The appeal court held that specialized knowledge is not a requisite for a tailoring business if this is traditionally a business of the family.

9. As to the question of renewal of the agreement with Pushpa Chavan what is left out of the arguments of the petitioner is that the plaintiffs had to file RCS No. 436 of 2009 against the very same Pushpa Chavan and an eviction decree has been obtained. However, an appeal was pending on the date of the impugned order. I am now informed that the appeal was disposed of only two days ago. That surely cannot make any difference.

10. The reliance on the decision of the supreme court in the case of *Sree Balaji Krishna Hardware Stores v Srinivasaiah*¹ will not assist the petitioner today because that was clearly a decision that turned on the peculiar facts of that case.

11. As to the decision in *Badrinarayan Chunilal Bhutada v Govindram Ramgopal Mundada*,² this is no authority for the proposition that an issue must be framed separately on comparative hardship. It only says that comparative hearing is a factor that must be taken into account and itself consists of several ingredients. Once the trial court and the appeal court have both done so, there is little scope for interference.

12. Apart from everything else, this is brought as a civil revision application under Section 115 of the Code of Civil Procedure 1908. The grounds for interference are narrow and, in my view, it is settled law that these should not be impermissibly expanded so as to result in a complete re-appreciation of the evidence that was before the courts below. Unless it is pointed out that there is either a

1 (1998) 2 SCC 708.

2 (2003) 2 SCC 320.

jurisdictional error or a material defect on the face that is *ex facie* apparent, a court in revision will not interfere; and most emphatically not only because it prefers some other view. Indeed, sub clause (c) of Clause 1 of Section 115 also speaks of jurisdiction for a good reason, because it must be shown that the court below acted in the exercise of its jurisdiction illegally or with material irregularity. I will accept for the purposes of this argument that a perverse finding will fall within the expression “material irregularity”. That necessarily means that it must be unequivocally demonstrated that the view of the courts below was one that could not plausibly have been arrived at on a plain reading of the matter. If the view is plausible, then there will be certainly no scope for interference.

13. In this case, the view of the court below cannot be faulted. The Civil Revision Application is rejected with no order as to costs. The Civil Application does not survive and is disposed of as infructuous.

14. The petitioner is to deliver possession within sixteen weeks from today. The extended period is in lieu of stay. In that time, the petitioner is not to create any third party rights or part with possession. Liberty to the owner to file a separate application in the trial court for fixing interim compensation until possession is delivered.

(G. S. PATEL, J)