

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 282 OF 2017

Mubarak B Khan and Others

..Applicants

Vs.

Pankaja R. Vanjari and Others

..Respondents

Mr. Sanskar Marathe, for the Applicants.

Mr. Amey Deshpande, for the Respondents.

CORAM :- B. P. COLABAWALLA, J.

DATE :- JULY 12, 2017.

P. C.:

This Civil Revision Application has been filed challenging the impugned judgment and decree dated 27th September, 2013 passed in R. C. S. No.410 of 2009 as well as the order dated 4th March, 2017 passed in Regular Civil Appeal No.639 of 2013. By the impugned judgment and decree dated 27th September, 2013, the Applicants (Original Defendant Nos.1 to 3) were evicted from the suit premises. The Appellate Authority also, by its order dated 4th March, 2017, dismissed the Appeal and confirmed the order of the Trial Court. For the sake of

convenience, I shall refer to the parties as they were arrayed before the Trial Court.

2 The Applicants herein were Original Defendant Nos.1 to 3 before the Trial Court. Respondent Nos.1 to 5 were Original Plaintiff Nos.1 to 5 and the other Respondents in this Civil Revision Application were Original Defendant Nos.4 to 8. It is the case of Defendant Nos.1 to 3 that Plaintiff Nos.1 to 5 along with Defendant Nos.4 to 8 are the owners of the suit property bearing House No.779, Guruwar Peth, Pune more particularly described in paragraph 1 of the Plaint. Out of this entire property, it is the case of Defendant Nos.1 to 3 that, two rooms on the ground floor admeasuring about 12 x 12 and 12 x 14 feet respectively are in their possession as tenants (for short "the suit premises"). They claim to be tenants since the year 1947.

3 Be that as it may, as Plaintiff Nos.1 to 5 required the suit premises for their own use and occupation, they filed Suit bearing No.410 of 2009 on the ground of bonafide requirement and nuisance. This suit was contested by Defendant Nos.1 to 3 by filing their Written Statement. On the basis of these pleadings, the

Trial Court framed as many as five issues. On the basis of these issues, the parties led their respective evidence and thereafter, after hearing the parties, the Trial Court decreed the suit and directed Defendant Nos.1 to 3 to hand over vacant possession of the suit premises to the Plaintiffs within a period of two months from the date of the order. I must mention here that the suit was decreed only on the ground of *bonafide* requirement. As far as the ground of nuisance is concerned, the same was answered in favour of Defendant Nos.1 to 3 and against the Plaintiffs. This is how the suit came to be decreed.

4 Being aggrieved by this order of the Trial Court dated 27th September, 2013, Defendant Nos.1 to 3 preferred an Appeal in the Court of the District Judge-15, Pune at Pune being Regular Civil Appeal No.639 of 2013. This Appeal was ultimately disposed of by the judgment and order dated 4th March, 2017, whereby the Appellate Authority confirmed the order of the Trial Court and dismissed the Appeal.

5 In this factual backdrop, Mr Marathe, the learned counsel appearing on behalf of the Applicants (Defendant Nos.1 to

3) canvassed only one contention before me. He submitted that in the facts and circumstances of the present case, the evidence clearly established that there was no case of *bonafide* requirement made out by the Plaintiffs, and therefore, the suit could not have been decreed on this ground. In this regard, he submitted that in the cross examination of the Plaintiffs they had clearly admitted that they had received one room which was in possession of one Yusuf Khan Pathan and this fact was suppressed by the Plaintiffs. He submitted that this was an additional room which was received by the Plaintiffs and was different from the property described in the Plaint. He submitted that by virtue of this suppression, the Plaintiffs had dis-entitled themselves in seeking the decree on the ground of *bonafide* requirement. He submitted that this suppression has been brushed aside by the Courts below which really goes to the root of the matter, and therefore, interference is called for in my limited jurisdiction under Section 115 of the Code of Civil Procedure, 1908 (for short "CPC").

6 On the other hand, Mr. Deshpande, the learned counsel appearing on behalf of Plaintiff Nos.1 to 5, submitted that there was nothing wrong in the impugned orders. He submitted that

the findings given therein are based purely on the factual material and evidence led by the parties and require no interference. He submitted that the submissions of the learned counsel appearing on behalf of Defendant Nos.1 to 3 proceeds on the wrong premise that the room that was obtained by the Plaintiffs from one Yusuf Khan Pathan was an additional room to the ones already disclosed in the Plaint. He submitted that this room was acquired by the Plaintiffs from said Yusuf Khan Pathan sometime in the year 1990 and the present suit was filed only in the year 2009. The description given of the suit property in the Plaint clearly indicates that it consisted of totally nine rooms and which fact has not been denied in the Written Statement by Defendant Nos.1 to 3. In fact, he submitted that even in the Written Statement it has not been mentioned anywhere that the room that was surrendered by Yusuf Khan Pathan was an additional room over and above what was described in the Plaint. This being the factual position, he submitted that the argument that there was any suppression on the part of the Plaintiffs, is wholly misconceived. He, therefore, submitted that there was no merit in this Civil Revision Application and the same ought to be dismissed.

7 I have heard the learned counsel for the parties at length and have perused the papers and proceedings in the Civil Revision Application. I have also carefully considered the orders passed by the Trial Court as well as the Appellate Authority. On going through the impugned orders, I find considerable force in the argument canvassed on behalf of the Plaintiffs. In the Plaint, the description of the entire property can be found from paragraphs 1 to 5 thereof. On going through this description, it is clear that the suit property is basically a property bearing House No.779 and is a two storey structure. It is specifically stated in the Plaint that two rooms in this property are occupied by Defendant Nos. 1 to 3 as tenants. Apart from this, one room is occupied by Plaintiff No.1, one room is occupied by Plaintiff No.2, one room is occupied by Plaintiff No.3 and four rooms are occupied by Plaintiff Nos.4 and 5 respectively. This clearly shows that the entire suit property consisted only of nine rooms. This fact has not been denied by Defendant Nos.1 to 3 in their Written Statement. It is only at the time of the arguments that it was canvassed that the room that was acquired by the Plaintiffs from the said Yusuf Khan Pathan was an additional room. Apart from the fact that in view of what is stated in the Plaint, these

submissions appear to be factually incorrect, I find that it makes little difference in the facts of the present case, considering that this room (and which forms the part of the entire property) was surrendered by Yusuf Khan Pathan way back in the year 1990 and the suit was filed only in the year 2009. This being the factual position, I do not find any merit in the contention of the learned counsel appearing on behalf of Defendant Nos.1 to 3 that a decree of eviction ought not to have been passed on the ground of *bonafide* requirement as the Plaintiffs were guilty of suppression. In the facts of the present case, I clearly find that there was no suppression on the part of the Plaintiffs.

8 As far as the merits of the case are concerned, I find that the lower Courts have correctly appreciated the evidence before coming to a finding that the suit premises were *bonafide* required by the Plaintiffs for their use and occupation. The lower Courts have even considered the issue of comparative hardship as contemplated under Section 16 (2) of the Maharashtra Rent Control Act, 1999 and have thereafter held that greater hardship would be caused to the Plaintiffs, if the decree is not passed, rather than the other way around. I must mention here also that it is an

admitted fact before me that after the suit was filed, Defendant Nos.1 to 3 never made any attempt to search for any alternate accommodation. This Court in the case of **Yogesh Dattaram Pathak v/s Shrikrishna Shriram Joshi** reported in 2003 Bom.R. C. 433 (Writ Petition NO.2508 of 1991 decided on 15th July, 2002), has taken a view that if the tenant has not led any evidence to show that it was not possible for him to secure similar accommodation, in that case, the question of comparative hardship has to be decided against the tenant. Relevant portion of this decision reads thus:-

“12. Coming to the issue of comparative hardship, as is seen, the Petitioner has not only pleaded but also established on record that the Petitioner has no other place and was at the relevant time staying in one room accommodation in the attic portion of the suit building. On the other hand, the Respondent in his written statement has merely stated that he would suffer comparative hardship if the decree was to be passed. The Respondent has further averred that he was staying in the suit premises for last more than 43 years and his father had taken the premises on lease from the grand father of the present Petitioner. It is not the case of the Respondent that no alternative accommodation for residence would be available in the same locality or for that matter in the city of Pune. All that is mentioned in para 4 of the written statement is that, it is not possible to get residential accommodation on lease unless huge deposit is paid and that he was unable to afford the same. No doubt financial condition of the tenant can be taken into account while considering this issue. But, that alone cannot be the basis to answer the issue one way or the other. Merely because the tenant cannot afford another accommodation as he would be required to pay deposit for securing suitable alternative accommodation, cannot be legitimate basis to deny relief of possession to the landlord in spite of having established the fact of bona fide and

reasonable requirement in the suit. That cannot be and is not the legislative intent. The principles to be borne in mind while examining this issue is well stated in the decision of the apex Court reported in AIR 1979 SC 272 in Bega Begaum's case. The apex Court has held that both the parties have to discharge the onus with regard to issue of comparative hardship. It is not enough for the tenant to say that he would suffer hardship but he has to further plead and prove that it will not be possible for him to get alternative suitable accommodation in the same locality or for that matter in the same city. In absence of which the Court will have no option but to answer the issue of comparative hardship against the tenant."

(emphasis supplied)

9 This being the law laid down by this Court, I find that the comparative hardship issue was also correctly decided by the Courts below in favour of the Plaintiffs.

10 For all the foregoing reasons, I find no merit in the Civil Revision Application. It is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

11 At this stage, the learned counsel appearing on behalf of Defendant Nos.1 to 3 states that Defendant Nos.1 to 3 shall accept the impugned orders including the eviction decree passed against them and not challenge this order in a Superior Court. He however prays that considering that it is now the monsoon season,

six months time be granted to vacate and hand over peaceful and vacant possession of the suit premises to the Plaintiffs as per the decree dated 27th September, 2013.

12 Considering that Defendant Nos.1 to 3 now accept the eviction decree passed against them and are not challenging it any further, and coupled with the fact that the monsoon season is on, Defendant Nos.1 to 3 are granted time to vacate and hand over vacant and peaceful possession of the suit premises to the Plaintiffs till 2nd January, 2018, subject to them filing their undertaking in this Court that they shall not part with possession and/or create any third party rights and/or interests in the suit premises. Subject to this, the Civil Revision Application is dismissed.

(B. P. COLABAWALLA, J.)