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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

CIVIL REVISION APPLICATION NO. 542 OF 2016

Deepchand Manikchand Kothari
(Since deceased through his legal heir)
Milind Deepchand Kothari.

... Applicant.

V/s.

Ramkrishna Pandurang Jamdar.

... Respondent.

Mr. Kishor Patil a/w. Ms. Smita Mane for the Applicant.
Mr. V.S. Talkute for the Respondent 1.

CORAM : N.M. Jamdar, J.

25 January, 2017.

Oral Order :-

By this Civil Revision Application, the Applicant has challenged the judgment and decree passed by the District Judge, Satara dated 31 March 2016, whereby the suit filed by the Respondent – landlord is decreed on the ground of bonafide requirement. By the impugned judgment and decree the Applicant has been directed to hand over possession of the suit premises.

2. Civil Suit No. 459 of 2001 was filed by the Respondent – landlord seeking possession of the suit premises, commercial premises, let out to the Applicant. The Applicant is running a medical store from the said premises. It was pleaded by the Respondent – landlord that his son is currently in service and his family consists of his wife, three daughters and a son. He wants to start a business of ready made clothes and so also the wife of the Respondent – Plaintiff needs to use the premises so that they can be utilized by the family of the Respondent – landlord to supplement in their income. The suit was also filed on the ground of permanent construction stated to be carried out by the Applicant and that the Applicant has committed default in payment of arrears of rent. The Applicant filed his written statement and denied the contentions raised in the plaint. It was stated that the bonafide requirement of the Respondent – landlord is not proved and the Respondent – landlord has ample premises in his possession. The allegations of permanent construction and being in default were denied. It was stated that the hardship would be to the Applicant. The Suit was tried by the learned Civil Judge, Junior Division, Phaltan. The learned Civil Judge negated the ground of bonafide requirement of the Respondent – landlord and decreed the suit on the ground of permanent construction carried out by the Applicant and on the ground of default in payment of arrears of rent. The suit was accordingly decreed by the judgment and decree dated 19 September

2008. An Appeal bearing No. 377 of 2008 was filed by the Applicant challenging the judgment and decree passed by the learned Civil Judge in the Appeal. The learned District Judge held that the Respondent – Plaintiff had proved that the premises were required reasonable and bonafide for his personal use. Issue of hardship was held in favour of the Respondent. As regard the finding rendered by the learned Civil Judge in respect of permanent construction and default in payment of arrears of rent, they were held in favour of the Applicant. Accordingly, on the ground of bonafide requirement the learned District Judge sustained the judgment and decree passed by the learned Civil Judge and dismissed the Appeal by judgment and order dated 19 September 2008.

4. Heard learned Counsel for the parties.

5. The learned Counsel for the Applicant firstly submitted that the learned Civil Judge had negated the ground of bonafide requirement placed in service by the Respondent – landlord against which finding there was no appeal filed by the Respondent – landlord nor any cross-objections were filed in the appeal filed by the Applicant and therefore, the learned District Judge could not have reversed the finding as regard bonafide requirement. It was contended that the ground of bonafide requirement was not even

urged before the District Court and the learned District Judge has suo-motu reversed the finding. The learned Counsel relied upon the decision of the Division Bench in the case of *Hasanate Taheriyyah Fidayyiah v/s. Mahesh s/o. Kishor Saran*¹, the decision of the Apex Court in *Laxman Tatyaba Kankate and Anr. v/s. Taramati Harischandra Dhatrak*² and the decision of the learned Single Judge of this Court in the case of *Bombay Suburban Art and Craft Education Society and Anr v/s. Govind Gajanan Dabholkar and Ors.*³.

6. The learned Counsel for the Respondent on the other hand relied upon the decision of the Division Bench of this Court in *Vithaldas and Ors. v/s. Mansukhlal*⁴ and of the learned Single Judge of this Court in *Punamchand Dahyalal Nanawati v/s. Ramanlal Balubhai and Ors.*⁵, *Musaji Mohamadali Master and Sons and Anr. v/s. Mr. Gulamali Dadabhai Amreliwala*⁶ and of the Apex Court in *Banarasi and Ors. v/s. Ram Phal*⁷ to contend that the course of action taken by the learned District Judge is permissible.

1 2014(2) Mh.L.J. 884

2 2010 (7) SCC 717

3 2016(1) Bom. C.R. 498

4 1980 Mh.L.J. 612

5 1987(3) BCR 521

6 2005(2) All MR 320

7 2003(9) SCC 606

7. The contentions of the learned Counsel for the Applicant is that in the absence of any cross-objections or in any cross appeal a party cannot challenge a part of the order that has gone against such party in the appeal filed by the other party.

8. There are two facets. One, if there are two independent reliefs sought for in the suit and one relief has been refused and decree is passed in respect of the other relief. Second, if a relief sought for various grounds and while passing decree on other grounds one of the ground for seeking such decree has been negated. In the cases that have been cited by the learned Counsel for the Applicant, it is the first position that arose for consideration. In the case of *Hasanate*, which was decided by the Division Bench, a suit filed by the Plaintiff therein was dismissed on the ground that the trustees were not joined and in the appeal, without filing any cross-objection or a cross-appeal, the appellant therein sought to seek relief in its favour. The Division Bench, relying upon the provisions of Order 41 Rule 22, negated the contentions that even in the absence of cross-objection and or cross-appeal, a decree that has been refused can be sought in the Appeal. In the case of *Laxman Tatyaba Kankate*, the factual matrix that arose for consideration before the Apex Court was that a suit was filed for specific performance in which decree both for possession as well as monetary damages was sought by the plaintiff therein. The trial court had

partly decreed the suit and directed the appellant therein to pay an amount of Rs.10,000/- with interest. The first appellate court, while setting aside the decree passed by the trial court for payment of money, passed a decree for specific performance. It is in this context the Apex Court held that such independent relief could not be sought without filing any cross-objection or a cross-appeal. In the case of *Bombay Suburban Art and Craft Education Society*, the learned Single Judge had an occasion to consider the power of the appellate court under Order 41 Rule 33 and it was laid down that though the power under Order 41, Rule 22 regulate the conduct of the parties in the appeal, it does not fetter power of the appellate court under Order 41, Rule 33 to do complete justice between the parties. But for that purpose, facts on record must justify such course of action.

9. In the present case what is sought is a relief of possession. This relief was decreed by the trial court, albeit on a different ground. This decree of possession was sought to be sustained in Appeal by the Respondent. This fact situation arose for consideration in the decisions cited by the learned Counsel for the Respondent. The learned Single Judges of this Court in the case of *Punamchand Dahyalal Nanawati and Musaji Mohamadali Master and Sons* had an occasion to consider the identical contentions squarely in respect of the provisions of the Bombay Rent Act, 1947. The learned Single Judges held that it was permissible for a party to

support and agitate a ground for eviction negated by the trial court, in the appeal, when on other grounds a decree for possession was granted in its favour by the trial court. In the case of *Banarasi*, the Apex Court has reiterated the position that in absence of cross-objection or cross appeal, the respondent in the appeal can support the decree granted, laying challenge to a finding recorded in the judgment against him. Therefore, it cannot be said that the Appellate Court was powerless to entertain the challenge of the Respondent to denial of the ground of bonafide requirement in the appeal filed by the applicant as the ultimate relief, i.e. the possession of the suit premises, remained the same.

10. There is however one more aspect of the matter. That is, different consequences may ensue from a decree passed under different grounds of eviction in both, the Bombay Rent Act, 1947 and the Maharashtra Rent Control Act, 1999. These two enactments lay down contingencies when a landlord may recover possession from the tenants. The parameters and conditions for invoking each of these grounds have been specified and also that consequences that ensue from the decree passed under these grounds. For example, in respect of grounds of eviction in Section 16(1)(i) and 16(1)(j) of the Act of 1999, an elaborate scheme has been laid down in Section 16(6) of the Act of 1999. Therefore, though ultimately under all grounds, the landlord may get possession of the suit property when a decree is passed in his favour, the

possession may come with different restrictions, obligations and bundle of rights.

11. However, for the purpose of the present case, it is not necessary to delve deeper in this aspect, as even assuming different heads of eviction under the Act are to be considered as separate schemes, it will not make much difference in the present case. In the case at hand the ground on which the decree is sought for is, default in payment of rent, permanent construction and bonafide requirement. As pointed out by the learned Counsel for the respondent in the case of bonafide requirement, there is an additional restriction placed on the landlord and therefore, in the facts of the present case no grievance can be made by the Applicant – tenant. The law laid down by the Apex Court in the case of *Banarasi* and the learned Single Judges in the case of *Punamchand Dahyalal Nanavati* and *Musaji Mohamadali Master and Sons*, govern the case at hand. Therefore, the objection raised by the learned Counsel for the applicant in respect of the power of the appellate court, cannot be accepted.

12. The learned Counsel for the applicant is not right in contending that the issue of bonafide requirement was not even argued in the appeal and is taken up suo-motu by the learned District Judge. The perusal of the Judgment of the District Court will indicate that not only that ground of bonafide argument was

advanced before the District Court by the respondent but was also countered by the applicant.

13. As far as the merits of the challenge are concerned, the learned Counsel for the Applicant submitted that the Respondent has various premises which aspect has been rightly considered by the learned Civil Judge. He submitted that no case of bonafide requirement was proved by the Respondent. I have gone through the decision of the learned Civil Judge dismissing the ground of bonafide requirement. The reasoning is entirely unsatisfactory, and not befitting the Court of first instance. The learned Civil Judge has dismissed the personal requirement in four – five sentences. The learned Judge simply observed that having gone through the documents on record and evidence of parties, conclusion is reached that since other properties are available, the Respondent can start the business in those properties. Whether the properties are suitable and whether they are available is not considered at all. The finding of the learned Civil Judge on the ground of bonafide requirement is perverse.

14. The need pleaded by the Respondent – landlord is that his son and wife want to start their business. The acceptance of this need by the learned District Judge as bonafide, cannot be termed as perverse. The learned District Judge has considered the aspect in detail especially of the additional premises available. The learned

District Judge noted, which is also the argument of the learned Counsel for the Applicant, that the premises available to the Respondent – landlord are one open plot and one shop from where a laundry is being conducted. As far as the open plot is concerned, the learned District Judge rightly held that the Respondent – landlord cannot be forced to start a business by constructing and on the open plot. As far as the laundry is concerned, when the appeal was being heard, the premises were not available. The learned Counsel for the Applicant filed an additional affidavit to place on record that the possession of the laundry is made available to the Respondent and contended therefore, need of the Respondent – landlord is satisfied. To this additional affidavit, affidavit-in-reply is filed by the Respondent wherein it is stated that so called laundry was only a stall like structure admeasuring 6 x 4 sq.ft. which was installed by the tenant. It was stated that the stall has been removed by the said tenant. Therefore, there is no shop that can be said to be available to the Respondent – landlord and therefore, the events which are sought to be placed on record by additional affidavit cannot said to alter the bonafide requirement of the Respondent – landlord.

15. As regard the aspect of the comparative hardship is concerned, the learned District Judge has noted that the Respondent – landlord has no other premises to carry out the business. The learned District Judge also took note of the cross-examination of the

Applicant who was of the age of 75 years when he deposed. No evidence was led that after receiving the suit notice, any attempts were made to search for any other premises for carrying out the business. Nothing has been placed on record as inspite of various efforts, the Applicant could not find any alternate premises. The reasons why no efforts were made to find any alternate premises, could be that the Applicant is confident of getting the premises if a decree is passed. In the conclusion, the view taken by the learned District Judge on re-appreciation of evidence, cannot be interfered with in the limited revisional jurisdiction.

16. In the circumstances, the Revision Application cannot be entertained and is accordingly rejected.

17. At this stage the learned Counsel for the applicant seeks continuation of the ad-interim relief for period of eight weeks. I am inclined to grant period of six weeks, however, it will take some time to get the copy of the order, therefore the ad-interim relief granted on 22 September 2016 be continued for period of eight weeks on same terms and conditions as stated in the said order.

(N.M. Jamdar, J.)