

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 767 OF 2014**

Sushila Prabhakar Kore & Anr	...Applicants
<i>Versus</i>	
Jagdish Chhitarmal Ashiwal & Anr	...Respondents

**WITH
WRIT PETITION NO. 6343 OF 2014**

Sushila Prabhakar Kore & Anr	...Petitioners
<i>Versus</i>	
Jagdish Chhitarmal Ashiwal & Anr	...Respondents

Mr Kamlakant Pandey, *for the Applicants in CRA and for the
Petitioners in WP.*

CORAM: G.S. PATEL, J
DATED: 29th November 2017

PC:-

1. Heard.

2. The challenge is to an order of 6th May 2014 of the Appellate Bench of the Small Causes Court at Bandra, Mumbai dismissing the Petitioners' appeal filed against an eviction decree in the Respondents' RAE Suit No. 426 of 2007. There is also a separate Writ Petition filed by the same revision Applicant against an order of 6th May 2014 passed by the Appellate Bench on the

Petitioners/Defendants' application for permission to file documentary evidence in the form of certain electricity bills, as an application under Order XLI Rule 27 of the Code of Civil Procedure 1908.

3. The tenancy in question is of Flat No. 20 on which there is a structure with tin sheet walls and a cement sheet roof. The monthly rent is Rs.50/-. The Plaintiffs said that after the death of their father the Plaintiff and his five brothers succeeded to his estate. There were six rooms that were divided between these brothers and the room occupied by the Defendants came to the share of the present Plaintiff. He sought the Defendants' eviction on the ground of *bona fide* requirement, saying that he had to stay in other rented premises of 12 ft x 10 ft with his wife Saraswatibai, their sons Ganesh and Shashikant, two daughters, daughter-in-law, and grandson. For these small premises they were paying a high rent. The son Shashikant and the two daughters were all adults. The lack of accommodation directly affected the son's marital prospects. There were already seven members in the family. The family *bona fide* required the premises for its use and occupation.

4. Defendants Nos 1 and 2 filed written statements. The 3rd Defendant did not and he remains out of the frame of these proceedings. Defendants Nos 1 and 2 denied the Plaintiffs' case, and put up an argument that the area was declared as a slum. Of course there is no material for this whatsoever, so I will reject the argument on that basis, as did the Appeal Court.

5. Having framed issues and taken evidence the Trial Court decreed the suit and ordered the Defendants' ejectment. Before the Appeal Court, six points for determination were framed. The question of *bona fide* requirement was point no. 3 and on an re-appreciation of the evidence and on a consideration of the law, the Appeal Court held for the Plaintiffs and dismissed the Defendants' appeal.

6. In examining the evidence the Appeal Court found that as a matter of fact what the Plaintiffs said about a growing family crowding into a small accommodation was true. The Defendants during the pendency of the appeal filed an application under Order XLI Rule 27 to prove some electricity bills. Independent of whether that application should or should not have been allowed, the Appeal Court found that the bills did not prove the Defendants' case, viz., that the Plaintiffs had accommodation elsewhere. Indeed the trial record indicates that there is no substantial cross-examination worth the name by the Defendants of the Plaintiffs on the ground of *bona fide* requirement. The 1st Defendant actually accepted the correctness of the Plaintiff's testimony about the family and their accommodation. The 2nd Defendant was also examined and said that the Plaintiff had four premises and was planning put up a building. In cross, she was unable to prove this. When the Defendant tried to produce the electricity bills, it was found that this was without any supporting pleadings. The electricity bills were found to be in the names of Jagdish and Ganesh. Jagdish is the Plaintiff and Ganesh is one of his sons. The Appeal Court held that this was insufficient to show that the Plaintiffs had three other rooms as canvassed by the Defendants.

7. Ultimately, on a careful examination, the Appeal Court found that the ground of *bona fide* requirement was established, and, addressing itself to the question of comparative hardship, took the view that greater hardship would be caused the Plaintiffs if relief was denied.

8. In the present Civil Revision Application, it is sought to be argued that this view is perverse or suffers material irregularity or a jurisdictional error. I fail to see how. I cannot re-appreciate the evidence any more than I can substitute my view for a completely plausible view taken by the court below. There is no merit to the CRA. It is dismissed.

9. In the companion Writ Petition, the challenge is to an order refusing the Petitioners' application at Exhibit 13 to produce additional evidence. This was in the form of the electricity bills that I have referred to earlier. The question is additional evidence in support of what pleading? The Appeal Court found in both orders that there was no base pleadings for this evidence at all. In cross-examination DW-2 said that she had no evidence. It was also not demonstrated that the Petitioner was prevented in any manner from producing this evidence at the appropriate time before the Trial Court. Order XLI Rule 27 is not an unconstrained or unrestricted license to make up for the gaps or lacuna in Trial Court evidence.

10. This Writ Petition is similarly without merit and it is rejected. There will be no order as to costs.

(G. S. PATEL, J)