

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

CIVIL REVISION APPLICATION NO.563 OF 2017

Mr.Shamrao Shyamwel Suryawanshi .. Applicant
vs
Mr.Santosh Moihanlal Lodha & anr .. Respondents

Mr.Pankaj Thatte a/w Mr.Amol Wagh for Applicant
Mr.Chetan V.Damre for Respondents

***CORAM: G.S.KULKARNI, J
DATE: DECEMBER 18, 2017***

P.C.

Heard learned Counsel for the parties. This is a revision application of the tenant who is suffering a decree of eviction and assails the concurrent findings of both the Courts below. The judgment of the learned trial Judge dated 4.1.2011 in Regular civil suit no.57 of 2003 has been confirmed by the learned District Judge, Malegaon in Appeal No.22 of 2011.

2. The Respondent-landlord had instituted Regular Civil Suit No.51 of 2003 against the applicant seeking decree of eviction and possession on the grounds, namely of arrears of the rent since

1.7.1977, of the applicant acquiring an alternate suitable accommodation, and non-user of the suit premises since January 1997.

3. The learned trial Judge, considering the oral and documentary evidence has recorded a finding of fact that the applicant had acquired alternate premises namely “a bungalow in Camp area near the house of Mr.Patharkar at Manmad.” The case of the applicant is that the said house property was in the name of his wife and thus not belonging to the applicant. This assertion was negated by the trial court as the applicant could not discharge the burden that the alternate premises were not belonging to him and that the wife of the applicant was residing independently and/or was estranged. There is also a finding recorded by the Court that the electricity and water supply of the suit premises was disconnected. The learned trial Judge accordingly came to the conclusion that this ground of the applicant having acquired alternative premises as urged by the respondent/landlord seeking eviction of the applicant

was proved except the ground of arrears of rent. The learned trial Judge accordingly decreed the suit.

4. In the appeal as preferred by the applicant against the judgment and decree of the learned trial Judge, the appellate Court, has confirmed the findings as recorded by the learned trial Judge. The learned appellate Judge recorded that the petitioner in his cross-examination has admitted that Nalini Sharad Suryawanshi-wife of the applicant admitted that there was a disconnection of the electricity supply and also water connection to the suit premises. It was observed that on the background of the applicant acquiring alternate premises and as this fact was proved on evidence, it was difficult to believe that a prudent man can still occupy the tenanted premises to which electricity and water supply has been disconnected. Accordingly, the applicants appeal was dismissed by the appellate Court.

5. Learned counsel for the applicant in assailing the

concurrent findings has made two-fold submissions. He firstly contended that there is an inherent defect in framing issues by the learned trial Judge. According to him the defect is that the issues are framed as if the case falls under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 which was in the Act in operation prior to its repeal by the Maharashtra Rent Control Act, 1999. It is the submission that the issue of hardship as framed by the learned trial Judge is in fact an issue which is relevant to an issue of bonafide requirement and suit is not filed on the ground of bonafide requirement and therefore there is an apparent error in framing the issues. It is next contended that the Courts below are also in error in holding that electricity and water supply were disconnected on account of non-payment. If that was the case then the presumption is of occupation. The decree thus needs to be set aside on this count itself.

6. The learned Counsel for the respondent-landlord has opposed the submissions as urged on behalf of the applicant. It is

submitted that none of these issues are relevant to be considered in this proceedings in the revisional jurisdiction of this Court as these are the issues which are not even remotely raised either before the trial court or before the appellate Court. It is submitted that there are clear findings of fact as recorded by the learned trial Judge, which clearly and unequivocally go to show that the applicant had acquired alternate premises. It is submitted that the findings as recorded by the learned trial Judge are based on evidence as also they are confirmed after due consideration by the appellate court. It is accordingly submitted that the application deserves to be dismissed.

7. Having heard the learned Counsel for the parties, I am of the clear opinion that there is no merit in the contentions as urged on behalf of the learned Counsel for the applicants. Perusal of the impugned judgment clearly shows that the courts have considered the case of the respondents on the oral and documentary evidence on record and more particularly on the applicant having acquired alternate premises and having done so was not in occupation of the

tenanted/suit premises. There is plentiful evidence on record which clearly indicate that the applicant was not occupying the suit premises. It is not in dispute that the electricity and water supply was disconnected. Further, it is also clear that though the alternate premises are stated to be in the name of the wife, however there is no evidence on record as adduced on behalf of the applicant to show that the applicant's wife had means to acquire the alternate premises and secondly that the said premises were exclusively in occupation of the applicant's wife and/or the applicant had no concern whatsoever with the said alternate premises. There is no dispute that when such a plea was raised by the applicant the burden was completely on the applicant to prove that he had no connection whatsoever with the alternate premises and/or that his wife was estranged from applicant. As seen from the record, the plea of the wife being the owner of the alternate premises and that the applicant continued to occupy the suit premises is completely unsubstantiated.

8. The contention as urged on behalf of the applicant that

there is an error on the part of the learned Judge in framing the issues and more particularly the issue of hardship in my opinion, would not assist the applicant. This for the reason that the respondent/plaintiff had made out a clear case on the two the principal ground namely of the applicant having acquired alternate premises and that the applicant was not using the suit premises six months prior to the institution of the suit in question. If the essentials as necessary in law to prove these two grounds of eviction are established on facts then merely an issue of hardship having been framed and the learned trial Judge making observation on the bonafide requirement would not amount to any material irregularity in adjudication of the suit. In any event, this argument on improper framing of issues in my opinion also cannot be considered as this was not the ground on which the applicant had approached the appellate Court. Perusal of the applicant's appeal memo before the appellate Court indicates that no such ground was ever raised, before either of the Courts below. It appears to be clearly an after thought and raised for the first time in this proceedings. In any event, a perusal

of the plaint indicates that the ground of the applicant acquiring alternate suitable accommodation was clearly raised. A perusal of the written statement would show that in fact this ground as specifically urged and asserted in the plaint was not specifically denied. Moreover, apart from the nature of the written statement, the oral and documentary evidence on record of the trial court was sufficient to establish the respondent's case on the applicant acquiring the alternate premises. The learned counsel for the applicant therefore, would not be correct in assailing the findings of the Courts below on the submissions as noted above. Surely the findings of the Courts below cannot be assailed on the grounds which are not the grounds raised before the Courts below.

9. There is no perversity whatsoever in the findings as recorded by both the courts below so as to come to a conclusion that the Courts have exercised jurisdiction with material irregularity. There is no merit in the application. It is accordingly rejected. The applicant to hand over the vacant possession of the suit premises

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within six weeks from today. No costs.

{G.S.KULKARNI, J}