

sas

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELATE JURISDICTION

CIVIL REVISION APPLICATION NO.2 OF 2017

Haribhau Punjaji Shinde (since deceased)

through LRs. & Ors.

..Applicants.

V/s.

Satyabhamabai Shankarrao Patil (since
deceased) through LRs. & Ors.

..Respondents.

Mr.Anil Kumar Patil for the Applicants.

Mr.M.M.Sathaye with Mr.Chetan Damre for the Respondents.

Coram : N.M.Jamdar, J.

Date : 23 March 2017

ORAL ORDER

The Applicants have challenged the concurrent Judgments and Orders passed by the learned Civil Judge, Junior Division, Malegaon in Regular Civil Suit No28/1998 dated 27 June 2007 and the learned District Judge, Malegaon in Civil Appeal No. 51/2007 dated 26 August 2016, decreeing the suit filed by the Respondents-landlords and dismissing the appeal filed by the Applicants-tenants.

2. The suit premises in occupation of the Applicants are shop premises admeasuring 12 x 19 sq. ft. The Respondents-

landlords / original Plaintiffs filed a Regular Civil Suit No.28/1998 seeking possession of the suit premises on the ground of *bonafide* requirement of the family of the Respondents-landlords and on the ground of arrears of rent by the Applicants. The suit was decreed by the learned Civil Judge by Judgment and Order dated 27 June 2007. The learned Civil Judge held in favour of the Respondents-landlords on the ground of *bonafide* requirement, however negated the case for default in payment of arrears of rent. Civil Appeal No.51/2016 filed before the learned District Judge, Malegaon was dismissed. Cross objections filed by the Respondents-landlords challenging the finding of default rendered by the Civil Judge were allowed.

3. Mr.Anil Kumar Patil, learned counsel for the Applicants submitted that the learned Civil Judge examined the material on record and also the evidence and had rendered a categorical finding that the amount of arrears of rent were deposited by the Applicants within a period of one month from the date of notice, therefore, the Applicants could not be termed as a defaulter. The learned counsel submitted that there is no discussion in the decision of the learned District Judge while reversing this finding. He submitted that what is referred to by the learned District Judge is the conduct of the Applicant in the year 1978 which is not relevant. Mr.M.M.Sathaye, learned counsel for the Respondents argued that there is no finding that the arrears of rent were deposited with 9% interest as required under section 12(3)(a) of the Bombay Rents, Hotel and Lodging

House Rates Control Act, 1947, so also, it is clear that the Applicants were not ready and willing to deposit the rent.

4. In decision of the Appellate Bench the factual finding recorded by the Civil Judge that the amount of arrears of rent was deposited within a period of one month from the receipt of notice has not been referred to at all. The learned District Judge has referred to the payments of rent made by the Applicants in the year 1978 and the learned counsel for the Applicants is right in contending that this fact is not germane. Therefore, while reversing the decree on the ground of default, a categorical finding had to be recorded by the learned District Judge that the amount of arrears were not deposited as required by law within a period of one month from the date of notice. The Act of 1947 provides an opportunity to a tenant to make good the default after receipt of notice. In these circumstances, the decree passed against the Applicants on the ground of default in arrears of rent will have to be quashed and set aside and is accordingly set aside.

5. However, even if the decree on the ground of default of rent is set aside, that would not by itself result in setting aside the consequential directions to the Applicants to hand over possession of the suit premises as the Respondents-landlords has also sought possession of the suit premises on the ground of *bonafide* requirement. In the plaint, Plaintiff disclosed the number of premises in her possession. It was stated that out of six rooms, two rooms are

on the front side, one of which is occupied by the present Applicants. Four rooms are on the backside, which are not in good condition. It is pleaded by the Respondents-landlords that she has two married sons Balkrishna and Satish. One shop which is on the front side is in occupation of her son Satish who is running a shop in the name of Amol Spare Parts. Balkrishna has three sons and one daughter and Satish has also two sons who are grown-up. Therefore, it is stated that the premises in the possession of the Applicants are needed for these family members to start their business. Their need as pleaded is certainly genuine. If this requirement has been treated as a *bonafide* by both the Courts, there is no perversity in the conclusion.

6. The learned counsel for the Applicants submitted that during the trial, an offer was given to the Applicants whether the Applicants will occupy the premises on the backside which, though the Applicants had refused at that time, they had made an application in the appeal under Exhibit-27 that now the Applicants are ready to accept the said premises. The learned counsel for the Applicants submitted that even today the Applicants are ready and the request of the Applicants now was needlessly rejected by the Appellate Court. The learned counsel for the Respondents submitted that the premises on the backside were not in good condition which is the case of the Respondents right from the inception of the suit. The learned counsel for the Respondents also submitted that it is not that the rooms have fallen vacant during the trial. Apart from this

position, the Applicants were given an offer during the trial which they refused on the ground that the premises on the rear side are not suitable. This aspect has been rightly considered by both the Courts while considering the comparative hardship. The Court proceedings are not for taking chances. An offer was given during the trial which was specifically refused and, therefore, the learned Appellate Court did not consider it appropriate to reopen the issue after a period of eight years and force the landlady to act on the suggestion given by her eight years earlier in different circumstances.

7. In these circumstances, I do not find any perversity committed by both the Courts in considering the aspect of *bonafide* requirement and comparative hardship. The Judgment and Decree passed by the learned District Judge will have to be sustained. The Revision Application is accordingly dismissed.

8. At this stage, the learned counsel for the Applicants seeks time to vacate the suit premises. The learned counsel for the Respondents opposes and states that alternate premises are available. However, to give some breathing time in case the Applicants are desirous of taking the challenge further, the decree will not be executed for a period of 8 weeks from today. The learned counsel for the Applicants states that the Applicants alone is in possession of the suit premises and they will not create any third party rights in the suit premises. His statement is accepted.

(N.M.Jamdar, J.)