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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY***

***CIVIL APPELLATE JURISDICTION***

***CIVIL REVISION APPLICATION NO.332 OF 2016***

Smita Kirtikar Thakkar

..Applicant.

V/s.

Vidya Doulatrao Londhe

..Respondent.

Mr.P.S. Dani, Senior Advocate i/b. Mr.Jai Nerurkar for the Applicant.

Mr.Ashutosh Kulkarni with Mr.Akshay Shinde for the Respondent.

***CORAM : N.M.Jamdar, J.***

***DATED : 12 January, 2017***

**ORAL ORDER**

The Applicant has challenged concurrent Judgment and orders passed by the Civil Judge, J.D., Sangli in the Regular Civil Suit No.359/2004 and of the District Court, Sangli in Regular Civil Appeal No.614/2012 decreeing the suit filed by the landlord and dismissing the appeal filed by the Applicant-tenant. As a consequence, the Applicant has been directed to vacate and hand over the suit premises to the Respondent.

2. The suit premises are located on the ground floor of the building which is situated in the main part of Sangli city. The suit premises admeasure approximately 250 sq. ft. The premises are being used by the Applicant for commercial purpose. The suit was filed by the Respondent-Plaintiff seeking possession on the ground of *bonafide* requirement and on the ground of default by the Applicant in payment of rent. As regards the *bonafide* requirement, it was pleaded that the Respondent-Plaintiff has other shop premises, however they are on tenancy basis for commercial use and the residential premises are not close to where the suit premises are located. In the suit premises, business was carried out from the first floor and which was not suitable and in the nearby area another shop had to be taken on leave and licence basis. It was contended that the niece and nephews of the Respondent were staying along with the Respondent and considering the need of the family, the suit premises had to be demolished and a new building had to be constructed to accommodate all, both for residential and commercial purposes. Both the Courts have accepted this case of the Respondent-Plaintiff and also accepted the case of the Respondent that the Applicant was defaulter in payment of rent.

3. Heard the learned counsel for the parties. Mr.Dani, learned Senior Advocate for the Applicant submitted that the need of the niece and nephews cannot be considered as the need of the Respondent-landlord. The factum of three shops being available to

the Respondent, one on the first floor, one which was at Madhavnagar and third in the nearby locality, was not considered in proper perspective by both the Courts below. It was contended that without decree for eviction against the other tenant who was occupying an adjoining shop premises, no demolition or reconstruction can take place. It was contended that the need for residential premises did not survive as the Respondent has a bungalow at Madhavnagar, which aspect is not considered by the Appellate Court.

4. As far as the argument regarding the adjoining tenant is concerned, the learned counsel for the Respondent has placed on record a copy of the order passed in Regular Civil Suit No.167/2006 wherein the suit on identical averments was decreed on 23 December, 2016 i.e. after the impugned order is passed. Therefore, the Respondent has taken steps against the other tenant and decree is also obtained. Hence this grievance of the Applicant does not survive.

5. As regards the shops are concerned, the Applicant is occupying the first floor in the suit premises and using this as shop. It is common knowledge that a shop conducted on the ground floor next to a road is preferable from the business point of view than one on the first floor. Since both the Courts have taken note of this position, their approach cannot be considered as perverse. As regards

the other shop in the locality is concerned, the Respondent had examined the licensor to prove that those premises were taken on leave and licence basis. Third is the shop at Madhavnagar. The learned counsel for the Applicant has placed on record the Registration Certificate under the *Bombay Shops & Establishments Act, 1948* to submit that this premises are owned by the Respondent and they have been shown as 'personal'. The learned counsel for the Respondent has rightly submitted that this certificate does not indicate that the premises are of the ownership of the Respondent and 'personal' only refers to a category as, whether it is personal, semi-Government or Government. These premises are also on tenancy basis. In fact, it is the case of the Respondent in the plaint itself that the premises have been taken away from the city. It has come on record that the shop premises at Madhavnagar are not in the center of the city, as the suit premises are. If the Respondent seeks to shift to the center of the city to expand the business from the suit premises, the view taken by both the Courts that this need is *bonafide*, cannot be stated to be an impossible view.

6. As far as the need of the nieces and nephews and their family residing with the Respondent, it has been brought on record that since the Respondent-Plaintiff does not have children, the nephew and nieces have been residing along with them since the last two decades and their ration card is also joint. There are in fact four families and the premises for residence at Madhavnagar are not

adequate. The learned counsel for the Respondent urged that it is an usual practice in the area to have residence on the first floor and commercial area on the ground floor, which the Respondent intend to do. It is in this context it is expressed by the Respondent to start the business and also residence in the suit premises.

7. As far as the comparative hardship is concerned, the Applicant has admitted in the evidence that in spite of various advertisements for letting out shops premises in the city, no efforts have been made by the Applicant to search for suitable premises. Having made no efforts, the Applicant cannot take a stand that the Applicant will be on streets if the eviction decree is upheld. No efforts are made perhaps for the reason that the Applicant is confident of securing alternate premises even if the decree is sustained.

8. The learned counsel for the Applicant thereafter contended that even assuming that the decree of eviction is to be confirmed, it may not be given effect to, till the possession from the other tenant is obtained as it is the case of the Respondent that the premises are required for demolition and reconstruction. The learned counsel for the Respondent opposed and contended that the Respondent can atleast start the business from the premises which are now available from the Applicant. This desire of the Respondent cannot be said to be unreasonable. The decree has been passed

against the other tenant but further proceedings are still expected. If the premises are available from the Applicant, the Respondent can atleast start the business from the suit premises which are on the ground floor than keep paying the licence fees for which the premises had to be taken in the nearby locality. Therefore, this request of the learned counsel for the Applicant cannot be accepted.

9. Both the Courts have also held that the case of default pleaded by the Respondent stands proved. Both the Courts have found that the fact that the Respondent has purchased the property was known to the Applicant and no formal intimation of the same was necessary in the facts of the case and yet the Applicant has failed to pay the rent. The only argument urged by the learned counsel for the Applicant that a specific attornment was necessary, cannot be accepted. Therefore the decree has to be sustained even on this count. In the circumstances, no case is made out for interference in the revisional jurisdiction of this Court. The revision application is accordingly rejected.

10. The learned counsel for the Applicant seeks protection for a period of 12 weeks. The decree will not be executed for a period of 12 weeks on a condition that the Applicant files an affidavit stating the details of members to her family currently in possession of the suit premises, along with their undertaking, that no third party rights will be created or possession will not be parted

with. The undertaking/s will be filed within a period of 3 weeks from today. Subject to the filing of the undertaking/s, the decree will not be executed for a period of 12 weeks from today. If no undertaking/s is filed as aforesaid, the decree will stand executable forthwith.

*(N.M.Jamdar, J.)*