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

CIVIL REVN. APPLICATION NO. 8 OF 2017

Mr. Subhash Tamboli. … Applicant.

V/s.

1(a) Smt. Aktaribegum w/o. Mohammed
Salim Shaikh and Ors. ... Respondents.

Mr. Pankaj Kowli i/b. I.A. Raibakkar for the Applicant.
Mr. Induprakash Tripathi a/w. Ms. Bhagyashree Gawas i/b. C.K. Tripathi for the Respondents.

CORAM : N.M. Jamdar, J.

25 January, 2017.

Oral Order :-

By this Revision Application, the Applicant has challenged the concurrent judgments and orders passed by the learned Small Causes Court Judge and the Appellate Bench of Small Causes Court decreeing the suit filed by the Respondent – landlady and directing the Applicant to hand over possession of the suit premises.

2. The Respondent filed a R.A.E. Suit bearing No.1068 of 2003 on the ground that the premises are required for bonafide and personal use of the Respondent's family which consisted of herself and her four sons. It was stated that currently the Respondent is in occupation of a small room and it is difficult for her to accommodate herself and her sons. It was stated that her elder son is married and is residing at the native place so also her three sons could not reside with her with their wives because of lack of accommodation. The written statement was filed by the Applicant stating that the suit premises were located in area which was declared as a slum under the Maharashtra Slums Act. It was stated that earlier also the Respondent had filed a suit on similar cause of action which was dismissed in the year 2002. The learned Small Causes Court Judge came to the conclusion that the suit premises are not located in area which is declared as a slum and that the Respondent – landlady had proved her case of bonafide requirement. Accordingly, by judgment and decree dated 13 February 2006, the learned Small Causes Court Judge directed the Applicant to hand over the possession of the suit premises.

3. An Appeal bearing No. 270 of 2006 was filed by the Applicant before the Appellate Bench of Small Causes Court. The Appellate Bench again considered the evidence on record and held that the Respondent had proved the case of bonafide requirement

and so also hardship causing in her favour. The Appellate Bench also held that the suit premises are not located in area notified as a slum. Accordingly, by the judgment and order dated 7 September 2016, the Appellate Bench dismissed the Appeal.

4. The learned Counsel for the Applicant submitted that the earlier suit filed by the Respondent having been dismissed on same ground, the Respondent cannot seek possession of the suit premises. This argument cannot be accepted as both the Courts have held that the dismissal of the earlier suit was not on merits but due to the bar to institute a Civil Suit contained in the Maharashtra Slum Areas (Improvement, Clearance and Re-development) Act, 1971. As far as the present suit is concerned, it is instituted when there was no such bar existing and therefore, both the Courts have considered the merits of the rival contentions in the present proceedings.

5. As far as the orders under challenge are concerned on merits, the learned Counsel for the Applicant submitted that the Respondent is not the landlady of the suit premises and is also not a owner. I have gone through the written statement filed by the Applicant. In the written statement there is no such categorical statement that the Respondent is not the landlady of the premises. The only reference is that since the property was declared as a slum, the Respondent has no right to claim any rent under the provision of

the Bombay Rent Act. Denial of title of a landlord has consequences and therefore, unless the Defendant takes a specific stand, such oral plea across the bar cannot be accepted. In both the Courts there was no such specific issue framed regarding the ownership of the Respondent – landlady. Therefore, this contention cannot be accepted.

6. As far as bonafide requirement is concerned, both the Courts have taken note of the number of the family members of the Respondent and the premises currently available. It is not disputed that the Respondent – Original Plaintiff had four sons and all are married. It is stated that some of them are residing at native place and that one son with his family wants to reside in the suit premises. It has also been urged on behalf of the Respondent – landlady that it is because of the inadequate premises that the family has been scattered. In any case, if admittedly the family of Respondent – landlady consists of four married sons, one room in possession of the Respondent – landlady cannot be considered as adequate and her desire to acquire more rooms to accommodate her family cannot be considered as not bonafide. There is no perversity therefore committed by both the Courts in accepting this case of the Respondent – landlady. It is the contention of the learned Counsel for the Applicant that in the year 1999 some rooms in the chawl were made available but however they were let out. This incident

has taken place almost seventeen years ago. Reason is given as to why the present premises in possession of the Applicant are sought, is that because they are adjacent to the present premises. In any case if the Respondent – landlady has given out some rooms which were available in past to other tenants so as to earn income, it cannot bar the Respondent – landlady for all times to come to seek possession of the suit premises on the ground of bonafide requirement. Nothing has been shown that the Respondent – landlady is in possession of adequate premises and there is no bonafide requirement on the part of the Respondent – landlady.

7. Considering these facts and that Applicant also does not have any premises, to balance the equities, after the matter was fully argued at length on 20 January 2017, it was adjourned till today for passing orders to ascertain and to call the learned Counsel for the Respondent – landlady to take instructions as to whether a longer time to vacate as much as possible can be given to the Applicant. The learned Counsel for the Applicant instead of making a request for longer time to vacate has sought to argue the matter and tender an affidavit at this stage stating that a room was made available in the year 2007 and it has been let out to some other tenant and licencee. The suit was decreed in the year 2006. The Appeal was fully heard thereafter. The Applicant did file an application for additional evidence in the Appeal Court and therefore, was aware of this

provision, no such stand was taken. The affidavit which is nothing but self-serving statement of the Applicant, without any proof. The contention that the Applicant is a house wife and not educated and was not aware of the position, cannot be accepted. The Revision Application is filed by the husband of the Applicant. Secondly, the Applicant had engaged an Advocate and it does not need a high level of education to know the fact which is sought to be advanced by way of affidavit today.

8. It was again asked whether the Applicant would want a longer time to vacate to balance the equities, the learned Counsel for the Applicant on instructions has chosen to contest the Application on merits. In these circumstances, having held that there is no error of jurisdiction on the part of both the Courts, no interference is warranted in the impugned order. The Revision Application is accordingly dismissed.

(N.M. Jamdar, J.)