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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.715 OF 2015

Jagdish Prasad G. Agrawal	..Applicant.
V/s.	
Mrs., Suvareba Sudhakar Sohani & Ors.	..Respondents.

Mr.P.K.Dhakephalkar, Senior Advocate with Mr.Amol Mhatre for the Applicant.

Mr. Ram Apte, Senior Advocate with Mr.S.C.Wakankar for the Respondents.

CORAM : N.M.Jamdar, J.

DATED : 1 February, 2017

ORAL ORDER

By this Revision Application, the Applicant has challenged the concurrent judgments and orders passed by the learned Civil Judge, Thane and the learned District Judge, Thane decreeing the suit filed by the Respondents-Plaintiffs and dismissing the appeal filed by the Applicant. By the impugned judgments and orders, the Applicant has been directed to hand over the possession of the suit premises to the Respondents-landlord.

2. Regular Civil Suit No.646/2009 was filed by the Respondents-landlord seeking possession of the suit premises, a commercial premises, situated on the ground floor of a building situated at Tikka No.13, City Survey No.148-A, Behramji Bhikaji Road, Jambhali Naka, Talav Patil, Thane (West). It was the case of the Respondents-landlord that predecessor of the Respondents-landlord had entered into an agreement with one contractor sometime in the year 1974, who created the tenancy in favour of the Applicant. It was contended that a suit was filed bearing Regular Civil Suit No.375/1993, which was withdrawn with liberty. Since the suit premises was required for *bonafide* personal use of the Respondents-Plaintiffs on behalf of Subhash, Purshottam and his son Atul for using them for the purpose of conducting the agency of Life Insurance Corporation and for Tax Consultancy. It was stated that the Applicant has another premises available to them nearby and is financially sound. Written statement was filed by the Applicant wherein various contentions denying the need of the Respondents-landlord were taken. It was contended that the suit instituted earlier was withdrawn and thereafter, the present suit was filed in the year 2009 and, therefore, the suit was neither within limitation nor the need is *bonafide*. It was denied that the Applicant had any other premises. Both the learned Civil Judge and the learned District Judge, after appreciating the evidence on record held that Respondents-Plaintiffs have proved their case that the suit premises were needed reasonably and *bonafide* for the use and occupation of

the Respondents-landlords for putting them to commercial use and greater hardship would be caused to the Respondents-Plaintiffs if the decree is refused. Accordingly, the learned Civil Judge, Thane decreed the suit bearing Regular Civil Suit No.646/2009 by judgment and decree dated 19 April, 2014 and the Civil Appeal No.194/2014 filed by the Applicant was dismissed by the learned District Judge, Thane by judgment and order dated 15 October, 2015. Thereafter, the present Revision Application is filed. In this Revision Application, the parties have filed additional affidavit in respect of the building in possession of the Applicant.

3. Heard Mr.P.K.Dhakephalkar, the learned Senior Advocate for the Applicant and Mr.Ram Apte, the learned Senior Advocate for the Respondents.

4. Mr.Dhakephalkar, the learned senior Advocate for the Applicant firstly submitted that in the suit filed in the year 1993, the same personal need was pleaded and the suit then was withdrawn and the present suit was filed in the year 2009, which is barred by limitation as the need arose prior to 1993 itself. It was contended that in the meanwhile, the premises on the third floor were given to one Chartered Accountant. Therefore, the delay in filing the present suit not only gives rise to a plea of limitation but also reflects on *bonafides* of the Respondents. It was contended that the suit premises have been sought for the need of starting of a consultancy

by Purshottam, who is now almost 75 years old and so also Subhash, who is also a senior citizen who has long since retired. It was contended that there is no evidence placed on record to demonstrate that Subhash could not continue the agency of the Life Insurance Corporation from the office of the Corporation and the premises are being sought from the Applicant only on some pretext or the other. It was contended that the entire evidence of the Applicant regarding premises stated to be in possession of the Applicant has been discarded by both the Courts. It was contended that the premises stated to be available to the Applicant are dilapidated and notices have been issued by the Municipal Corporation for immediate purpose of demolition. It was also contended that the Applicant is not owner of the premises but the property is jointly held by the family and brother of the Applicant. It was contended that even though notices have been given to the adjoining owners for road widening, notice is not given to Applicant, perhaps because notice has already been given on the ground that the premises have become dangerous.

5. Mr.Apte, the learned senior Advocate for the Respondents, on the other hand submitted that both the Courts have concurrently held that the need of the Respondents-landlord has been established, which is a finding of fact. It was also contended that there is no question of limitation as the fact that the need of the Respondents-landlord continues till today is not controverted by

giving any cogent evidence. It was also contended that in the written statement the fact of owning of building itself was denied and thereafter, no explanation has been given in the evidence. It was contended even otherwise that the Applicant is financially strong and will not be on the streets, if the decree is passed.

6. As far as the *bonafide* requirement of the Respondent-landlord is concerned, it is two-fold. Firstly, for starting a business of tax consultancy by Purshottam and his son Atul. That these two are qualified to start the consultancy, has been proved. That they have the experience and financial ability to set up the consultancy, is also established. The argument which was advanced in the Court today that such consultancy can always be started from the available higher floor has been rightly negated by both the Courts. There is a substantial difference in commercial terms from starting such activities from the premises on the ground floor than from a higher floor. Therefore, the desire of the Respondent-landlord to start consultancy from the best possible premises available, cannot be said to be not *bonafide*. Similar is the position of the need pleaded by Subhash. It is not that an agency has to be carried out from the premises of the Corporation and if a desire is expressed that the agency should be carried out through independent available premises, then, that desire also cannot be stated to be not *bonafide* as it will have a different impact on income if consultancy is carried out through independent and owned premises.

7. As far as the contention regarding the earlier suit is concerned, though the need of Purshottam and Atul was pleaded, the suit was withdrawn with liberty to file a subsequent suit. As it is rightly contended by the Mr.Apte that as long as *bonafide* requirement continues to exists, it cannot be said that the cause of action does not survive any more. It is not brought on record that in any manner, the need of the Respondents-landlord is exhausted or that it has become irrelevant. Therefore, as far as the need which exists even at the time of filing of the present suit, it cannot be stated to be barred by limitation. Furthermore, it has been pointed out that Purshottam was not a party to the suit filed in the year 1993. The need of Subhash was not pleaded in the earlier suit. Therefore, the finding rendered by both the Courts that the premises are required for *bonafide* personal use of the Respondents-Plaintiffs, cannot be stated to be perverse or barred by limitation.

8. As far as the comparative hardship is concerned, it was specifically stated in the plaint by the Respondents-landlord that the Applicant has another premises admeasuring 109 sq. mtrs. In the written statement, a categorical statement was made by the Applicant that he did not have any other place in Thane. Thereafter, once it was established that another premises are available in the form of a building to the Applicant, the Applicant sought to explain the same in his evidence. The evidence was led not by the Applicant but by

his son, power of attorney who could not give answers to various material aspects, which has been noted by both the Courts. In the evidence it has not been brought on record that the Applicant has no right whatsoever in the premises that are available. Therefore, there is a considerable change in the stand from the written statement and in the evidence. In view of this change of stand, it was obligatory on the part of the Applicant to provide the details regarding the non availability and non suitability of the building in question. The witnesses of the Applicant failed even to state the names of the tenants, number of shops that are available, whose names the electricity meters stand. In view of this evidence, both the Courts drew an inference that these premises are available to the Applicant.

9. As far as the condition of the building in possession of the Applicant is concerned, it has been urged that the notice for demolition has been issued, but as on today, no such demolition has taken place. Mr.Apte has drawn my attention to the additional affidavit where photographs are annexed, which shows the board put up on these that the premises are available on rent in this building. Even otherwise, from the evidence established on record, it cannot be disputed that the financial condition of the Applicant is sound and that the Applicant will be in a position to secure the premises. As far as the Respondents are concerned, it is not brought on record that they have any other commercial premises that are available to them. In these circumstances, the view taken by both the Courts on the

aspect of comparative hardship is also a possible view and merely because re-appreciating the evidence afresh another view is possible is not a ground to interfere in the revisional jurisdiction. The Revision Application accordingly cannot be entertained and is rejected.

10. At this stage, Mr.Dhakephalkar prays that the decree be not executed for a period of 10 weeks from today. Mr. Dhakephalkar, on instructions, states that the Applicant alone is in possession and he will not create any third party rights. Mr.Dhakephalkar states that usual undertaking of the Applicant will be filed within a period of two weeks from today. Though I am inclined to grant 8 weeks time, some time will be required for getting the copy of this order, hence upon filing of the undertaking as above, the impugned decree will not be executed for a period of 10 weeks from today.

(N.M.Jamdar, J.)