

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

CIVIL REVISION APPLICATION NO.94 OF 2016

Shri. Yadu Bhavanji Gahine

..Applicant

Versus

Shri. Vikas Shivaji Dhane and another

..Respondents

Mr. Dilip Bodake for the Applicant.

Mr. R. P. Kadam for the Respondents.

CORAM : R. M. SAVANT, J.

DATE : 5th MAY, 2017

PC.

1 The revisionary jurisdiction of this Court is invoked against the order dated 14.08.2015 passed by the Learned District Judge-6, Satara, by which, the Appeal filed by the Applicant herein came to be dismissed and resultantly, the decree passed by the Trial Court dated 13.01.2015 came to be confirmed.

2 The Applicant herein is the original Defendant No.1 to the suit in question. The Respondent No.1 herein is the original Plaintiff. The Suit filed under the Maharashtra Rent Control Act, 1999 was founded on three grounds namely, subletting, bonafide requirement and requirement for demolition on account of the structure being dilapidated. The suit premises admeasure about 6 khans equivalent to approximately 600 sq.ft. in Satara in which the Applicant/original Defendant No.1 is carrying on

business. In so far as subletting is concerned, it was alleged against the Applicant i.e. original Defendant No.1 that he had sublet the premises to the Defendant No.2. In so far as the ground of bonafide requirement is concerned, it was the case of the Plaintiff i.e. the Respondent No.1 herein that the premises are required bonafide by the Plaintiff for starting his business as the premises which the Plaintiff had taken on Leave and Licence basis were handed over back to the licensor. In so far as the requirement for demolition is concerned, the Plaintiff relied upon the notice issued by the Satara Municipal Council. The Trial Court on the basis of the material on record returned an affirmative finding in respect of all the three grounds. The Trial Court on the basis of Exh.154, which was a notice under Order XII Rule 3 of the Civil Procedure Code addressed by the Defendant No.1 to the Defendant No.2 which notice was not disputed by the Defendant No.1, held that the ground of subletting was proved by the Plaintiff. In so far as the bonafide requirement is concerned, it has come on record that the Plaintiff and his wife were having a medical shop in the name and style of Atharwa Medical which shop they were occupying on Leave and Licence basis and had to vacate and possession of the said shop was handed over back to the licensor. In view thereof, the Plaintiff required the suit premises for starting his business of medical shop for which the Plaintiff has no other

premises. The Trial Court adverted to the evidence of the Defendant No.2 wherein the Defendant No.1 had deposed that there are other premises available in the vicinity as also he has property at village Kondhave which is about three kilometers away from Satara. In so far as the ground of the premises being bonafide required for demolition is concerned, the Trial Court held that the notice issued declaring the structure being in dilapidated condition was at the behest of the Defendant No.1 himself and therefore the Defendant No.1 could not question the issuance of the notice by the Municipal Council on the ground that the officials of the Municipal Council were in collusion with the Plaintiff. The Trial Court accordingly deemed it appropriate to decree the suit by judgment and order dated 13.01.2015.

3 The Defendant No.1 i.e. the Applicant herein carried the matter in Appeal to the District Court by filing Regular Civil Appeal No.53 of 2015. The Lower Appellate Court in the light of the findings recorded by the Trial Court framed issues accordingly and answered the said issues against the Defendant No.1. The Lower Appellate Court therefore confirmed the findings of the Trial Court in respect of all the three grounds. The Lower Appellate Court accordingly dismissed the Appeal by the impugned judgment and order dated 14.08.2015. However the Lower Appellate Court granted three months time to vacate the suit premises.

The said period of three months has already been over long back. The above Civil Revision Application is pending since the year 2015. The decree holder i.e. the Respondent No.1 has put the decree into execution and on 25.04.2017 the Executing Court has issued the possession warrant. That is how the above Civil Revision Application was moved on an urgent basis before this Court today. In the light of the concurrent orders passed by the Courts below, no case for exercise of the revisionary jurisdiction of this Court is made out. The Civil Revision Application is accordingly dismissed.

4 However, the Applicant is granted time upto 30.06.2017 to vacate the suit premises on the usual undertaking to be filed by the Applicant in this Court within two weeks from date.

[R.M.SAVANT, J]