

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 5 OF 2017

Gulabbai Bandusingh Rathod	...Applicant
<i>Versus</i>	
Nandan Vinaykumar Shah	...Respondent

Mr Ashok B Tajane, *for the Applicant.*
Mr Samir Kumbhakoni, *for the Respondent.*

CORAM: G.S. PATEL, J
DATED: 31st October 2017

PC:-

1. Heard.

2. The Civil Revision Application impeaches the judgment and decree passed in Regular Civil Appeal No.45 of 2016 on 8th November 2016 by the District Judge for Solapur, as also the original judgment and decree dated 18th November 2015 in Regular Suit No.493 of 2008 of the 5th Joint Civil Judge, Junior Division, Solapur.

3. The facts lie in a narrow compass. The present Applicant is the original Defendant. The Respondent is the original Plaintiff. In the rest of this order, I will refer to them as such.

4. The premises in question are two rooms of 12 ft. X 8 ft. and 12 ft. X 6 ft. The Defendant was admittedly a tenant of these premises. The Plaintiff brought suit for eviction on the ground of reasonable and bona fide requirement. The Plaintiff's case was that he was the landlord of Municipal House No.109, part of CS No.3896/2, 3899/2 as also 3900/1 and 3898 at Shukrawar Peth, Solapur. The suit premises came to the Plaintiff's share following an oral partition in his joint family. The original tenant was the present Defendant's deceased husband Bandusingh. When he died the Defendant, Gulabbai, was residing with him at the time of his death, and therefore succeeded to the tenancy. The Plaintiff accepted Gulabbai as his tenant and accepted rent from her. He issued rent receipts in her name. The rent is said to have been Rs.15/- per month. There is some suggestion that the Defendant is or was irregular in payment of rent but this was not canvassed and in fact seems to have been waived. The ground for eviction was bona fide requirement as contemplated by Sections 16(1), (g) and (k) of the Maharashtra Rent Control Act, 1999 ("**the Rent Act**").

5. The Plaintiff's case was that, being in a dilapidated condition, the premises were ordered to be demolished by the Municipal Corporation. The Plaintiff received a notice from the Municipal Corporation. This apart, the Plaintiff urged that he required the premises reasonably and bona fide for himself and his family including his aged parents. The house was ground plus one upper floor. The ground floor was being used for commercial purposes. On the upper floor there was one bed room, two small rooms and a kitchen, but no toilet or bath. His parents were unable to go up and

down the stairs and were compelled to live elsewhere with the Plaintiff's brother.

6. The Plaintiff also said his second son had recently completed a diploma course in computer hardware and net working. He desired to start a business in the premises. It was not possible to construct a house or additional premises because part of the land fell under road widening. Therefore, on the question of comparative hardship, the Plaintiff claimed that it was he who would face the greater hardship. He terminated the Defendant's tenancy with effect from 31st March 2008 by a notice of 26th February 2008.

7. The Defendant contested the Suit. She refuted the allegations and it seems that in her Written Statement even denied the Plaintiff's ownership, itself a sufficient ground for eviction, but especially given that she had paid rent to him and he had accepted it, but I will let that pass. It was not disputed that the original tenant was her deceased husband. She however claimed that her two sons were also tenants. Neither she nor her sons ever filed a suit for declaration of their tenancy. On the contrary, the record indicates that the Defendant accepted that the tenancy receipts issued in her name alone. She of course denied that the premises were dilapidated. She claimed that another tenant, one Hiremath, on the upper floor, was evicted. The Plaintiff demolished some portion of the premises. She said also that there were eight family members residing with her.

8. Before the Trial Court the Defendant amended the Written Statement and averred that the Plaintiff had obtained possession of two rooms from another tenant. Those recovered premises were demolished. She admitted here that the Plaintiff was carrying on a printing press business. She alleged that in addition the Plaintiff recovered possession from two other tenants, one Kantikar and one Chikute. She said these premises were lying locked and vacant. Additional premises were recovered from other tenants and were demolished.

9. The Trial Court framed seven issues. It ultimately found in favour of the Plaintiff and decreed the Suit by an order dated 18th November 2015. The Defendant appealed. The Appeal Court framed several points for determination and considered them carefully. Point No.2 before the Appeal Court was whether the Plaintiff proved his bona fide requirement. The Appellate Court found that the Plaintiff's son Kunal had indeed obtained some qualification in computer technology. The Plaintiff deposed that his son had been compelled to take premises elsewhere on a rental basis since the present premises were insufficient. The Appellate Court found that there was no cross-examination of the Plaintiff on this aspect of the matter at all. This was also not denied by the Defendant. What the Defendant urged and which is canvassed before me is that the Plaintiff had obtained possession from other tenants and this was more than sufficient to satisfy his needs. It was argued that there was an admission by the Plaintiff in his cross-examination and my attention is invited to this at pages 56 to 60 of a compilation tendered today by the present Applicant.

10. The Appellate Court correctly found as a matter of law that it is for the landlord to decide how he should use the premises he owns. He is the best judge of his requirements. It is not for the Defendant-tenant, or even for the Court, to tell him how he should live his life or conduct his business affairs. No tenant can dictate to a landlord in a matter like this. This aspect of the law is well settled. (See *Gaya Prasad v Pradeep Shrivastava*;¹ and *Meenal Eknath Kshirsagar v Traders & Agencies & Another*.²) This is really the only point that is canvassed here.

11. As to the question of the so-called ‘admission’ by the Plaintiff, I find there to be none. He may have agreed that he had resumed possession from other tenants, or that some portions were demolished, but he has not once admitted that he has no need of the Defendant’s premises, or that he has no bona fide requirement. To the contrary, he has maintained that he has this need.

12. It is, in these circumstances not possible to find fault with the concurrent findings of the Courts below on the question of bona fide requirement.

13. As to the question of non-joinder of the Defendant’s sons, that is also not a plea that can be entertained at this stage. As I have noted neither the Defendant herself nor her sons took any steps to obtain an adjudication in the Defendant’s sons’ favour. It is too late now to use this as a ground to upset the orders in question.

1 2001 (2) Mh LJ 5811.

2 1997 (1) Mh LJ 121.

14. The Civil Revision Application is dismissed. In the facts of the case, there will be no order as to costs.

15. Possession is to be delivered within eight weeks from today.

(G. S. PATEL, J.)