

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

CIVIL REVISION APPLICATION NO. 714 OF 2016

Shri Dilip Rajaram Bevinkatti & Anr. ...Applicants

Versus

Smt. Urmila Suryakant Zad & Anr. ...Respondents

Mr. Vaibhav Sugdare, for the Applicants.

Mr. Chetan Patil, for the Respondents.

CORAM : N.M. JAMDAR, J.

DATE : 2 February 2017

ORAL ORDER :

1. By this Revision Application, the Applicants-tenants have challenged the judgment and orders passed by the learned Civil Judge, Kolhapur and the learned District Judge, Kolhapur, wherein the Suit filed by the Respondents-landlords on the ground of bona fide requirement has been decreed and the Appeal filed by the Applicants is dismissed.

2. The suit premises admeasuring 10 x 8 feet i.e. 80

sq.feet are situated in the heart of the Kolhapur city. It has been used as shop premises by the Applicants. Regular Civil Suit bearing No. 1593 of 2012 was filed by the Respondents-landlords in the Court of 16th Joint Civil Judge, Junior Division, Kolhapur on the ground of personal requirement. It was the case of the Respondents-Plaintiffs that they are unemployed and wishes to start their own business. They have no other premises except the suit premises and therefore, the premises were bona fide required for personal use. The Applicants contested the Suit contending that the Respondents-Plaintiffs have other properties as the members of joint family and since the Applicants are carrying on business for long time, greater hardship would be caused to them. Learned Civil Judge decreed the Suit by judgment and order dated 4 June 2014. Appeal No. 243 of 2014 was filed by the Applicants in the District Court, Kolhapur, which was dismissed by the learned District Judge on 14 September 2016.

3. Heard the learned Counsel for the parties.

4. The learned Counsel for the Applicants submitted that the finding regarding bona fide requirement of the Respondents-landlords is perverse. He submitted that the Respondents-landlords have other premises and theory of partition could not have been accepted. As far as this aspect of the matter is concerned, the learned Counsel for the

Respondents has drawn my attention to the cross-examination of the Applicants, wherein the Applicants have unequivocally accepted the position that though the properties mentioned by the Applicants were in the possession of various members of the family, after the death of grandmother of the Plaintiffs, the family members have been residing separately and their light meter is also in different names. In the cross-examination the Applicants have also clearly admitted that apart from the suit premises, the Respondents-Plaintiffs have no other premises. In view of these admissions by the Applicants, no fault can be found in the Courts accepting the case of the Respondents-Plaintiffs that the premises were required bona fide, as nothing has been placed on record that the Respondents-Plaintiffs are carrying on sufficient business elsewhere.

5. The learned Counsel for the Applicants then submitted that both the Courts have not taken into consideration the aspect of hardship and have also not considered whether a partial decree can be passed. Reliance was placed on the decisions in the cases of **Badrinarayan Chunilal Bhutada Vs. Govindram Ramgopal Mundada**¹ and **Gyanchand s/o Parmanand Jain & Ors. Vs. Wamanrao s/o Vyankatrao Shinde**². The learned Counsel for the Respondents submitted that this aspect is not pleaded in the Written

¹ **(2003) 2 SCC 320**

² **2010 5 Bom CR 542**

Statement and was argued across the bar during the Appeal.

6. As far as need to plea possibility of partial decree, in view of the decisions of learned Single Judge of the Apex Court, as referred above it will not be bar the Applicants from urging the Court to explore the possibility of a partial decree, in view of language of Section 16(2) of the Maharashtra Rent Control Act, 1999. The learned District Judge has considered this aspect. He has found that the premises of 80 sq.feet are too small to be divided into two parts and such division will not inure to the benefit of either of the parties. This is relevant criteria to be considered. It is not necessary to have a detailed and elaborate discussion on this aspect, as the area of the premises being 80 sq.feet is an admitted position and that both the Applicants as well as Respondents seek to carry out business therefrom. There cannot be a forced partial decree merely because the tenants want to somehow retain toehold in the premises. In these circumstances, the view taken by the learned District Judge that a partial decree is not possible, in the facts and circumstances of the case cannot be stated to be perverse.

7. Keeping in mind the limited jurisdiction under Section 115 of the Code of Civil Procedure, 1908 is not possible to interfere with the concurrent findings of fact. The Revision Application is accordingly rejected.

8. At this stage, learned Counsel for the Applicants seeks continuation of an ad-interim order. Considering the fact, some time will be required for the copies of the order. The ad-interim order is continued for a period of eight weeks on same terms and conditions as earlier.

[N.M. JAMDAR, J.]