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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.480 OF 2016

Smt. Anita Kisan Salokhe

..Applicant.

V/s.

Jaysingh Dnyandeo Powar & Ors.

..Respondents.

Mr.Prashant Bhavake for the Applicant.

Mr.Amit Borkar for the Respondent.

CORAM : N.M.Jamdar, J.

DATED : 9 February, 2017

ORAL ORDER

Heard the learned counsel for the parties. The Civil Revision is admitted and taken up for final disposal, by consent of the learned counsel for the parties.

2. The Applicant has challenged the judgment and order passed by the learned District Judge, Kolhapur in Regular Civil Appeal No.184/2012 dated 5 September, 2015 reversing the judgment and decree dated 10 February, 2012 passed by the learned

Civil Judge, Junior Division, Kolhapur in Regular Civil Suit No.441/2008.

3. The Respondents-landlords filed a suit bearing Regular Civil Suit No.441/2008 for recovery of possession of the suit premises from the Applicant. The possession was sought from the Applicant on the ground that the premises are required for *bonafide* and personal use of the family of Respondents-landlords more particularly his son. The possession was also sought on the ground that the Applicant has committed default in payment of arrears of rent. The learned Civil Judge dismissed the said suit by the judgment and decree dated 10 July, 2012 negating both the grounds taken by the Respondent-landlord. The Respondent thereafter filed an appeal bearing Regular Civil Appeal No.184/ 2012 in the District Court, Kolhapur. The learned District Judge confirmed the finding by the learned Civil Judge that the Applicant has not committed any default in payment of arrears of rent. The learned District Judge, however, held that the Respondents-landlords proved that the premises were required for *bonafide* personal use and that greater hardship would be caused to the Respondents-landlords. Accordingly, by judgment and decree dated 5 September, 2015, the Applicant was directed to hand over the possession.

4. Heard Mr.Prashant Bhavake, the learned counsel for the Applicant and Mr.Amit Borkar, the learned counsel for the

Respondent.

5. Mr.Bhavake, the learned counsel for the Applicant submitted that the case of *bonafide* requirement pleaded by the Respondent was rightly dismissed by the learned Civil Judge. He submitted that the need that was pleaded was only in respect of the son of the Respondents-landlords i.e. Kuldeep for the purpose of residence and for starting a spare parts shop. He submitted that in spite requirement of the son of the Respondents-landlords, the Respondents-landlords had sold a tenanted premises immediately next to the suit premises. He submitted that various aspects which were considered in detail by the learned Civil Judge, were not taken into consideration and in summary manner, the appeal was allowed. Mr. Bhavake submitted that the issue of hardship was not considered in proper perspective by the learned District Judge.

6. Mr.Borkar, on the other hand relying on the decisions in ¹*Yudhishter V/s. Ashok Kumar*, ²*C. Karunakaran (Dead) by LRS V/s. T. Meenakshi*, ³*Ramjidas and Another V/s. Rambabu and Others* submitted that the premises in possession of the tenant which was sold, were four to five years back and merely because the premises in possession of a tenant was sold, it will not preclude the landlord from raising a plea of personal requirement. It was submitted that it is a settled position that a tenant, if does not look

1 (1987) 1 Supreme Court Cases 204

2 (2005) 13 Supreme Court Cases 99

3 (2000) 9 Supreme Court Cases 329

for alternate premises cannot put forward a ground that hardship would be caused to him. It was contended that the need was pleaded for the entire family.

7. I have considered the rival contentions. The learned Civil Judge took into consideration the fact of selling of the premises in possession of another tenant. The learned Judge noted that the Respondents had given up their right to recover the possession from another tenant, around the time when the need of the son of the Respondents arose, that is the time when he was taking specialized education in automobile spares. The learned Civil Judge found that this is reflecting on the *bonafides* of the landlords. The learned Civil Judge found that the *bonafide* requirement having not been established, the question of comparative hardship would not arise. In the appeal, the District Court, which is the final fact finding Court, the entire evidence was open for re-appreciation. In the appeal, if the learned District Judge wanted to reverse the decree, a detailed scrutiny of evidence was required. Perusal of the decision of the learned District Court, unfortunately, does not give any such details of adjudication on the vital aspects. The learned Civil Judge has indicated a doubt regarding the *bonafides* of the Respondents-landlords in view of the circumstances in which the premises in possession of other tenant was sold. The decisions relied upon by the learned counsel for the Respondents indicate that selling of a premises, which are vacant cannot by any circumstances operate as a

bar to put forth a need of *bonafide* personal use. The suit may be maintainable but decree need not automatically follow, for that scrutiny of evidence is required. Therefore, a detailed adjudication on this aspect was necessary. The learned District Judge merely relied on the provisions of law. Since the learned Civil Judge has not considered the issue of hardship, the issue of hardship also arises for consideration of the learned District Judge for the first time. Here again a scrutiny as expected, was completely missing from the decision.

8. When this aspect was pointed out to the learned counsel for the Respondent that the admission of the Revision Application is necessary, the learned counsel for the Respondents requested that it will be appropriate if the appeal can be re-heard by the learned District Judge. The learned counsel for the parties requested that no detailed reasons be given in this order as it might affect the merits of the appeal which will be re-heard by the learned District Judge.

9. It is, therefore, clarified that what is observed in this order is, for purpose of remand of the proceedings to the learned District Judge and it is not to be construed as a reflection on the merits of the rival contention. Accordingly, Revision Application is disposed of by quashing and setting aside the judgment and order passed by the learned District Judge, Kolhapur on 5 September 2015. The Regular Civil Appeal No.184/2012 stands restored to the

file. Considering that the suit is filed on the ground of *bonafide* requirement by the Respondents-landlords, the learned District Judge will make an endeavour to dispose of the appeal within a period of six months from the date the writ of this Court reaches it, subject of course to earlier time bound directions. Registry to communicate the order forthwith. All contentions of the parties on merits are kept open.

(N.M.Jamdar, J.)