

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.704 OF 2016

Mr Jagannath Ramchandra Bhikhu	... Applicant
v/s	
Smt Shubhada Ramakant Patange	
and another	... Respondents

.....

Mr Prashant G. Sawant i/b Mr Vijay S. Gaikwad for Applicant.
Ms Preeti H. Gada for Respondent Nos.1 and 2.

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CORAM : B.P. COLABAWALLA, J.

DATE : JUNE 30, 2017

ORAL JUDGMENT : (*Per B.P.Colabawalla J.*)

1. This Civil Revision Application filed under section 115 of the Civil Procedure Code, 1908 (for short “the C.P.C.”) takes exception to the judgment and order dated 19th October 2016 passed by the learned Appellate Bench, Small Causes Court, Bombay in Appeal No.89 of 2009. The Applicant before me was the Defendant before the Trial Court and the Respondents herein were the Plaintiffs. The Plaintiffs had filed a suit being R.A.E. & R. Suit No.807/1247 of 2006. This Suit

came to be dismissed by the Trial Court. Being aggrieved thereby the Plaintiffs approached the Appellate Bench which partly decreed the Suit in favour of the Plaintiffs by the impugned judgment and order. It is in these circumstances that the Defendant (the Applicant herein) is before me in my revisional jurisdiction.

2 The brief facts that need to be noted are that the Plaintiffs are the owners of 100, Patange Chawl, Ground Floor, Takya Ward, Kurla, Mumbai 400 070. As far as the suit premises are concerned, the same is Room No.1 on the ground floor of this property (hereinafter referred to as the "suit premises"). The suit premises were let out to one late Mr Ramchandra Bhikhu for residential purposes at Rs.12.90 per month. The Defendant claims to be the only heir and legal representative of late Mr Ramchandra Bhikhu. It was the case of the Plaintiffs that the Defendant had failed and neglected to pay rent from 1st November 1996 along with the property taxes. It was also alleged that the Defendant, without the Plaintiffs' written consent, had carried out construction of a permanent nature and had also unlawfully sublet or given on

license the whole or part of the suit premises. Lastly, it was contended by the Plaintiffs that they bonafide required the suit premises for their own occupation and for the members of their family. It is on these grounds that the Plaintiffs approached the Court of Small Causes, Bombay by filing R.A.E. & R. Suit No.807/1247 of 2006.

3. In the plaint, it was averred that Plaintiff No.1 is 76 years old and is residing in a rented premises which is on the third floor of a building called Dhoble Bhuvan. It was stated that due to her old age, the third floor premises were not convenient for her residence. The other grounds, namely, construction of a permanent nature as well as arrears of rent and unlawful subletting were also pleaded in the plaint. Once the writ of summons was served upon the Defendant, the Defendant appeared and filed his written statement and resisted the claim of the Plaintiffs. The Defendant contended that there was no cause of action for filing the Suit and the same was barred by the law of limitation. On the issue of bonafide requirement of the Plaintiffs, the Defendant further contended that he had no other premises for his residence in Bombay

except the suit premises. On the issue of comparative hardship, it was pleaded that the Defendant tried to find out other premises in the area for his occupation but was unable to do so as he is a poor person and the prices in the area were extremely high. On these pleadings, the Trial Court framed as many as ten issues. On the basis of these issues, evidence was led by the Plaintiffs and the Defendant and after hearing the parties and considering the evidence, the Trial Court dismissed the Suit filed by the Plaintiffs.

4. Being aggrieved by this decision, the Plaintiffs approached the Appellate Bench of the Small Causes Court, Bombay. The Appellate Bench framed as many as eight points for determination. Thereafter, considering the evidence and the arguments of both the sides, the Appellate Bench partly decreed the Suit in favour of the Plaintiffs by holding that the suit premises were reasonably and bonafide required by the Plaintiffs and that if a decree was not passed in favour of the Plaintiffs, greater hardship would be caused to them rather than the Defendant. On the other grounds viz. arrears of rent, construction of a permanent nature and unlawful subletting,

the Appellate Bench answered those points / issues in favour of the Defendant.

5. Being aggrieved by this order of the Appellate Bench, the Defendant is before me in my revisional jurisdiction under section 115 of the C.P.C.

6. Mr Sawant, learned counsel appearing on behalf of the Defendant submitted that the Appellate Bench had gone completely wrong in appreciating the evidence that was led by the parties. He submitted that the Appellate Bench has not taken into consideration the evidence that was material and has in fact placed reliance on irrelevant material. He brought to my notice the findings of the Trial Court on the issue of bonafide requirement which could be found from paragraphs 15 to 23 of the decision of the Trial Court. He submitted that the reasoning given by the Trial Court was fully justified and there was no need to interfere with the same. He therefore submitted that I, in my limited revisional jurisdiction ought to interfere with the order passed by the Appellate Bench and quash and set aside the impugned order and restore the order of dismissal of the

Suit passed by the Trial Court. In support of his submissions, Mr Sawant relied upon a decision of the Supreme Court in the case of Raghunath G. Panhale (dead) by LRs v/s Chaganlal Sundarji and Co., reported in 1999 AIR SCW 3944.

7 On the other hand, Ms Preeti Gada, learned counsel appearing on behalf of Respondent Nos.1 and 2 submitted that the order of the Appellate Bench on the issue of bonafide requirement was fully justified and required no interference. She brought to my attention the evidence that was led by the parties and thereafter submitted that the findings given by the Appellate Bench were fully in consonance with the evidence led by the parties. She took me through paragraphs 38 to 47 of the Appellate Bench's order to substantiate her argument that the Appellate Bench has correctly applied its mind to the matter and has thereafter come to the conclusion that the suit premises were bonafide required by the Plaintiffs. Even on the issue of comparative hardship, she submitted that the Appellate Bench has taken into consideration the evidence including the fact that after the service of the writ of summons, the Defendant did not make any attempt to look for alternate

premises. This being the case, Ms Gada submitted that not only the findings of the Appellate Bench were fully justified but certainly did not suffer from any perversity apparent on the face of the record requiring my interference under section 115 of the CPC.

8 I have heard the learned counsel for the parties at length and perused the papers and proceedings in this Civil Revision Application. I have also carefully gone through the orders passed by the Trial Court dated 6th January 2009 and the Appellate Bench's order dated 19th October 2016. On going through these two orders, I do not find any merit in the contentions raised by Mr Sawant. The Appellate Bench of the Small Causes Court, Bombay is the last fact finding authority. It has considered the evidence led by both the parties in quite detail as can be seen from paragraphs 38 to 47 of the impugned order. On the issue of bonafide requirement, I cannot agree with Mr Sawant that there was no evidence to show that the Plaintiffs bonafide required the suit premises for their use and occupation. It is not in dispute before me that Plaintiff No.1 is 87 years old. She was residing earlier in rented premises which

were situated on the third floor of a building known as Dhoble Bhuvan. This building had no lift/elevator. Due to her old age, and because of her problem in her leg, she thereafter went to stay with her daughter and son-in-law who were allotted Staff Quarters by the Railways.

9. Considering that Plaintiff No.1 was staying with her son-in-law and that the rented premises that were in her occupation were not at all convenient for her to reside in, that a case for bonafide requirement was pleaded. On this evidence, the Appellate Bench came to the conclusion that the case for bonafide requirement had been made out. I do not find that this conclusion reached by the Appellate Bench on the basis of the evidence led before it, can by any stretch of the imagination be termed as perverse and/or suffering from any error apparent on the face of the record. In fact, on going through the evidence, I find that these conclusions were fully justified. The evidence clearly shows that Plaintiff No.1 was originally residing in a tenanted premises on the third floor of a building which did not have an elevator, that she was of advance age and had a problem in her leg and therefore to get out of the house it was

very difficult for her. It is in these circumstances that she shifted and decided to stay with her daughter and son-in-law. Even the premises in which her daughter (Plaintiff No.2) and her son-in-law (husband of Plaintiff No.2) were residing, did not belong to them but were Service Quarters allotted to the husband of Plaintiff No.2. There is nothing else that has been brought on record in the form of evidence to rebut this evidence and therefore, clearly a case for bonafide requirement was made out. Even the Trial Court in its judgment and order dated 6th January 2009, at paragraph 18 thereof, has clearly stated that after analyzing the evidence on record and considering the relevant aspects, it appears that the Plaintiffs required the suit premises for bonafide use and occupation because of the old age of Plaintiff No.1. This being the case, I find that the Appellate Bench was fully justified in coming to the conclusion that the Plaintiffs bonafide required the suit premises for their own use and occupation. Even on the issue of comparative hardship, the Appellate Bench has considered the evidence and come to the conclusion that greater hardship would be caused to the Plaintiff if a decree is not passed in their favour. This is coupled with the fact that it is admitted by the Defendant in his cross-

examination that after the service of the summons, he made no attempt to search for alternate premises. Looking to the overall facts of the matter, I do not find any reason to interfere with the impugned order dated 16th October 2016 passed by the Appellate Bench of the Small Causes Court.

10 This only leaves me to deal with the decision of the Supreme Court in the case of Raghunath G. Panhale (supra) relied upon by Mr Sawant. On going through this decision, I fail to see how the same supports the case of Mr Sawant. The ratio of this decision states that the word 'reasonable' in the context of section 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates (Control) Act 1947 connotes that the requirement or need is not supposed to be fanciful or unreasonable. It cannot be a mere desire. The word 'requirement' coupled with the word 'reasonable' means that it must be something more than a mere desire but need not certainly be a compelling or absolute or dire necessity. There cannot be any dispute about this proposition. However, I fail to see how the same would apply to the facts of this case. On the evidence led by the parties, the Appellate Bench has come to the correct conclusion

that a case of bonafide requirement was made out and that the Plaintiffs genuinely required or needed the suit premises for their use and occupation. I therefore find that in the facts and circumstances of this case, reliance placed on this decision by Mr Sawant is wholly misplaced.

11. For all the foregoing reasons, I find no merit in this Civil Revision Application, the same is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

(B.P. COLABAWALLA, J.)