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

CIVIL REVN. APPLICATION NO. 711 OF 2016

with

CIVIL APPLICATION NO. 776 OF 2016

Mr. Arvind Indrajeet Mehta
(Deleted since deceased)

... Applicant.
(Orig. Defendant)

Mrs. Madhuben Arvindbhai Mehta & Ors.

... Applicants.

V/s.

Smt. Vanitaben wd/o. Kakubhai & Ors.

... Respondents.
(Ori. Plaintiffs)

Mr. Omkar Khanvilkar a/w. Ms. Priyanka Rathi i/b. Solicis Lex for
the Applicant.

Mr. Yogeshkumar Yagnik for the Respondents.

CORAM : N.M. Jamdar, J.

25 January, 2017.

Oral Order :-

By this Revision Application, the Applicant has challenged the concurrent judgments and orders passed by the learned Small Causes Court, Mumbai and the Appellate Bench of Small Causes Court, Mumbai decreeing the suit filed by the

Respondent – landlord and dismissing the Appeal filed by the Applicant.

2. The Respondent – landlord filed R.A.E. Suit bearing No. 336/666 of 2009 against the Applicant seeking eviction of the Applicant from the suit premises which is situated on the first floor of the suit building. It is the case of the Respondent – landlord that the family consists of nine members who are residing on the first floor of the same building and the Plaintiff Nos.1 and 2 alongwith the family of Plaintiff No. 2's wife and his two daughters are residing on the ground floor and the Plaintiff No.2 is residing in the first floor with his wife and two sons. It was stated that both sons of Plaintiff No.2 are of marriageable age. Flat No.6 where the Plaintiff No.3 is residing admeasures 310 sq.ft. and it is not sufficient. It has no kitchen and has only one bath room. It was stated that apart from the family members there are four married daughters i.e. sisters of Plaintiff Nos.2 and 3 who keep visiting the suit premises on various occasions and are required to stay for longer period. Accordingly, the decree was sought on the ground of bonafide requirement of the Respondent - Plaintiff. Written statement was filed by the Applicant, in which a stand was taken that the need of the Respondent – landlord is not bonafide. It was stated that Room Nos.1 to 4 on the ground floor and the Room No.6 are available to the Respondent – Plaintiff which admeasures 1800 sq.ft. The learned Small Causes Court Judge, after considering the evidence on

record concluded that the suit premises were reasonable and bonafide required by the Respondent – landlord and no hardship will be caused to the Applicant who also has a residential flat in the nearby locality. Accordingly, by the judgment and order dated 20 March 2014, the Applicant was directed to hand over the vacant possession of the suit premises. The Applicant filed an Appeal bearing No.11 of 2014 before the Appellate Bench of Small Causes Court. The Appellate Bench after considering the evidence on record confirmed the finding of the learned Small Causes Court in respect of bonafide requirement and comparative hardship and dismissed the Appeal by order dated 21 October 2016.

3. Heard the learned Counsel for the parties.

4. The learned Counsel for the Applicant submitted that the Respondent – landlord has ample premises in their possession and the entire ground floor is available. He submitted that the family of the Respondent – landlord is joint and therefore, the premises in their possession are sufficient. He submitted that the Respondent – landlord has not produced the list of their movable and immovable properties and another suit has been filed on the ground of nuisance is pending and therefore, the decree could not have been passed. The learned Counsel for the Respondent supported the impugned order and submitted that as against the family of the Respondent – Plaintiff, the family of the Applicant is

small and the applicant has an additional flat available in the nearby locality.

5. As far as the issue of bonafide requirement is concerned, both the Courts have considered the evidence on record. The number of members in the family of the Respondent – Plaintiff has been established and nothing has been shown that these figures given by the Respondent – Plaintiff are not correct. The perusal of both the decisions clearly shows that the family of the Respondent – landlord is large. Even assuming the premises in their possession on the ground floor is taken into consideration as per the case of the Applicant itself they admeasures around 1800 sq.ft. Not only the family of the Applicant is large but there are various couples and their children and they are bound to require privacy even though they are staying together. As far as the premises i.e. Flat No.6 is concerned, it has come on record that it is 310 sq.ft. The landlord cannot be forced to live with a large family in such a small premises and if the landlord in such circumstances requires larger space privacy, the need cannot be stated to be not bonafide. The finding of fact recorded by both the Courts as regard bonafide requirement of the Respondent – landlord being a factual finding in which there is no perversity cannot be interfered in the revisional jurisdiction. As regard the contention that the Respondent did not produce list of their movable and immovable property, the Applicant had full opportunity to place on record that if the Respondent – landlord had

any other premises than the one which has come on record. The Applicant has failed to produce any such evidence.

6. As regards the pendency of the suit filed on the ground of nuisance is concerned, it has no bearing on the decree that is passed in the present suit and no contentions can be advanced on the ground of bonafide requirement passed should be set aside because there is a suit on the ground of nuisance pending. As far as the issue of comparative hardship is concerned, both the Courts have recorded a finding that the Applicant has another flat nearby and that in the cross-examination varying stand has been taken that he is the only person to manage his parents and that after marriage he will shift to the flat. The assessment of evidence in this regard also cannot be stated to be perverse. To balance further equities, it was put to the learned Counsel for the Applicant whether the Applicant is seeking longer time to vacate. However, the learned Counsel for the Respondent on instructions states that no such request is required to made and the matter needs to be contested on merits.

7. In these circumstances, in view of the above observations, no case is made out for interference in the revisional jurisdiction of this Court. The Revision Application is rejected. The Civil Application does not survive and is disposed of accordingly.

(N.M. Jamdar, J.)