

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION No. 20 of 2016

Abdul Raheman and Sons, Jalgaon,
through its owner and manager
Mohammed Yusuf Abdul Raheman,
age 68 years occupation business
R/o Navi Peth, Maheji Bazaar, Jalgaon
Taluka and District Jalgaon

...Petitioner

VERSUS

Laxminarayan S/o Nandram Mantri,
age 69 years occupation business
R/o Kasoda Taluka Erandol District Jalgaon.

...Respondents

*Mr Subodh P. Shah, Advocate for petitioner.
Mr A.S. Bajaj, Advocate, holding for Mr V.B. Patil,
Advocate for respondent.*

CORAM : SUNIL P. DESHMUKH, J.

DATE : 7th September, 2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned Advocates for appearing parties finally with consent.

2. Succinctly stated, petitioner is before this Court aggrieved by judgment and decree dated 22nd June, 2004 passed by the learned 2nd Joint Civil Judge (Junior Division), Jalgaon, in regular civil suit No. 64 of 2002 which is maintained

by the Appellate Court under its judgment and decree dated 10th July, 2014.

3. Eviction proceedings had been initiated by respondent-landlord, inter-alia, on the ground that suit premises being required by the landlord, his sons and grand-children for their residence and business. After hearing the learned counsel for the parties, it transpires that the landlord instituted the proceedings through power of attorney holder contending that due to old age, he requires medical attention, however, village Kasoda does not have proper medical facilities. Secondly, his family consisting of two sons and grand-children had been running business at Kasoda, which is a small place compared to Jalgaon and, as such, the business is also sought to be started at Jalgaon and the landlord does not have any other premises available for residence or business at Jalgaon. Upper storey of the same had been occupied by some other tenant, against whom as well proceedings for eviction had been initiated.

4. Learned counsel Mr. Shah contends that it is difficult to conceive that any of the sons, who were running established and prospering business at Kasoda, would move to a new place and start business afresh. Nor any material has been produced showing that the family really intends to start

business at Jalgaon. While this is so, he purports to refer to cross-examination of the landlord, particularly the portion as have occurred in paragraph No. 10 at page No. 46 of writ petition, wherein the landlord purports to refer to that he requires the ground-floor of suit premises for business and the first-floor for residence.

5. Besides, none of the sons have been examined by the landlord. He submits that it had been incumbent to lend credibility to the claim of demand being made bonafide for business purpose by adducing evidence at-least of one of the two sons as had been considered in the case of *Raghunath S. Dixit (since deceased) by his legal heirs Seeta D. Dixit and others Versus Surendranath B. Burad (since deceased) by his L."Rs. Surekha S. Burad and others* reported in 2016(3) *Maharashtra Law Journal* 720 by a learned Single Judge of this Court. He submits, that was a case, wherein landlord had sought eviction of tenant on the ground that his son, who had been technocrat serving at Baroda, was intending to come down to place like Nashik to start business activity. The trial Court had decreed the suit, however, in appeal by the tenant the decree had been set aside finding that no credence can be given to claim of the landlord in absence of examination of son before court. There is nothing placed on record showing that son was indeed interested in leaving his service at Baroda and thereafter carrying

on business of sale of electronic business in the suit premises. It was considered that it was necessary to place at least some material on record to establish that the son had been in position, technically and financially to undertake a business of the nature. The appellate court had, thus, reversed decree passed by the trial court and the same had been maintained by the learned Single Judge.

6. He further purports to contend that although claim of the landlord had been for business on ground floor, yet, the trial court had erred in not taking into consideration proper perspective of the matter. He submits that while the demand had been for business purpose, the trial court had committed an error and ought not to have granted eviction decree for residential purpose.

7. He submits that perusal of appellate court's judgment would reveal that it has reiterated the case pleaded by the parties and is short of depicting independent application of mind to the same and record. Appellate court has erred in cursorily following the decision rendered by the trial court.

8. He further purports to refer to that the suit had been instituted by power of attorney holder, who can seldom said to

have an effective relation with the landlord and in the circumstances, according to him, institution of suit itself had been defective and the suit on that count as well ought not to have been entertained.

9. While countering aforesaid submissions learned counsel Mr Bajaj submits that two courts have settled the factual aspect that suit premises being required bonafide and reasonably by the landlord. Two courts are fact finding courts and are concurrent in respect of their appreciation which is not perverse and this court would refrain from exercise of powers in its extraordinary jurisdiction.

10. He submits that the landlord had been to the court seeking eviction of the tenant through a power of attorney holder, who has been stationed at Jalgaon and as a matter of convenience, it was instituted by such a person who has been related to the landlord and had in depth knowledge of the factual aspects of the matter involved. That apart, he purports to refer to that it would not negate institution of the matter and developments therein. The evidence, in fact, has been given by the landlord himself.

11. He goes on to submit that the evidence as well would

reveal that unlike in cited case *Raghunath S. Dixit* (supra), in the present matter, the family had already been running business and according to him, flourishing business needed expansion further which is natural and on that count no analogy from cited judgment can be drawn and relied in the present matter. As a matter of fact, according to him, cited case is widely apart from factual aspects involved in present matter. He, therefore, submits that no reliance can be placed on the cited decision and the same should be discarded.

12. He further submits that there have been decisions rendered by the various High Courts including this Court as well as the Supreme Court so far as requirement of suit premises reasonably and for personal use, a mere expression of desire by the landlord is sufficient. He submits that there is ample other evidence on record to show that not only suit premises are required for business purpose but same are also required for residence. It is not seriously disputed that the landlord requires frequent medical attention and that the quality of the medical facilities available at Jalgaon is not available in Kasoda. He further contends that not only the landlord requires frequent medical attention but other members of the family as well require often medical treatment at Jalgaon. He submits that,

additionally it has come on record that son and daughter of one of the sons are already residing at Jalgaon. In the circumstances, bonafide need of the landlord does not require any further investigation and evidence.

13. He further contends that the appellate court's judgment is of the year 2014; the matter has been pending since 2015 in this court and in 2018 the matter is coming before this court for consideration.

14. He submits that it has also come on record that the tenant is a big concern and has several alternate premises available in Jalgaon itself. This aspect as well shall be kept at the back of the mind while considering the case.

15. Having heard learned counsel as aforesaid, the two courts hitherto have so far as bonafide requirement of the landlord concurrently considered that need of landlord of the suit premises is bonafide and reasonable. It has also emerged on record that the family of the landlord has been running business at Kasoda and they want to develop it further at Jalgaon for which they have no other premises at Jalgaon. It has also to be considered that it has been submitted that village Kasoda as compared to Jalgaon is a smaller place and Jalgaon is a district

place. Better medical facilities are available at Jalgaon as compared to Kasoda. Family members including landlord are required to come over to Jalgaon to attend medical problems. Grand-children of landlord are residing at Jalgaon. As such, taking into account need expressed by the landlord, it does not appear to be not genuine. It appears that the suit premises are reasonably and bonafide required by the landlord for occupation of himself and also for his family members. Having regard to this, although learned counsel for petitioner has submitted that having regard to evidence that the suit premises are required for the business purpose and eviction has been primarily granted for residential purpose, it would not be expedient to sustain decree of eviction, yet, perusal of paragraph No.10 of the appellate court's judgment would show that appellate court has indeed considered the requirement of suit premises had been on account of health grounds of landlord, setting up of business for his sons and education of grand-children and, as such, has unhesitatingly considered that plaintiff has proved bonafide requirement of the suit premises. In the circumstances, although learned counsel has made vehement effort to have set aside the decree passed by the two courts, I am unable to get persuaded, in the facts and circumstances and thus, civil revision application shall fail and is accordingly dismissed.

16. Rule stands discharged.

17. At this stage, learned counsel Mr Shah for petitioner, on instructions, seeks reasonable time to vacate suit premises occupied by the tenant from 1964. As such, the tenant shall vacate the suit premises within a period of six months from today and personally handover peaceful possession of the same to the landlord or his sons or grand-children, as may be directed by the landlord without creating any hurdle and shall not create third party interest, transfer or otherwise deal with the suit premises in any capacity and in the meanwhile, shall continue to pay compensation to the landlord at the same rate at which rent was being paid and shall file undertaking to aforesaid effect, within a period of six weeks from today.

**(SUNIL P. DESHMUKH)
JUDGE.**

Madkar