

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.194 OF 2017

Luckjitsingh s/o Kesarsingh Dumda
Age - 45 years, Occ - Business
R/o Plot No. 50, Sindhi Colony,
Aurangabad

APPLICANT

VERSUS

Sujata w/o Ramesh Jaiswal
Age - 53 years, Occ - Household
R/o Plot No. 59, Surana nagar,
Opp. Saint Francis English High School,
Jalna Road, Aurangabad

RESPONDENT

.....

Mr. Pradeep N. Sonpethkar, Advocate for the applicant
Mr. S. S. Joshi, Advocate for respondent sole

.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 25th APRIL, 2018

ORAL JUDGMENT :

1. This revision purports to take exception to concurrent decisions by trial and appellate courts in the proceedings initiated by plaintiff - landlady for eviction of defendant - tenant.
2. Broadly considered, after hearing learned advocates for the parties, indisputable position appears to be, there has been relationship of landlady and tenant between the parties. Eviction of the tenant had been sought by the landlady primarily on the

grounds of commission of default by tenant in making payment of rent and premises being *bona fide* and reasonably required by the landlady.

3. Trial as well as appellate courts have found that there had been commission of default in making payment of rent as well as the landlady requiring the suit premises *bona fide* and reasonably for personal use and further greater hardship would be suffered by the landlady as corresponding issue to the same about greater hardship had also arisen. As such, eviction had been ordered and the same had been confirmed by the appellate court.

4. Learned advocate Mr. Sonpethkar appearing for the applicant - tenant purports to make submissions over the findings on aforesaid grounds.

5. The plaintiff – landlady had issued notice which came to be responded to by the defendant - tenant but without any particulars. Learned advocate Mr. P. N. Sonpethkar, tries to make out some case over defendant referring to that along with the notice an amount of Rs.1,20,000/-had been tendered, however, he is not in a position to give any further explanation as to how the amount satisfies the arrears of rent claimed by the landlady

and what are the specifications about the same. Upon institution of proceedings and service of summons on the applicant - tenant, during prescribed period under the provisions of the Maharashtra Rent Control Act, there had been no tender of payment of rent nor there had been any defence in the written statement giving any explanation. Perusal of the judgment shows that the landlady had led more than sufficient evidence in respect of default having been committed by the tenant in making payment of rent for the period from April, 2011 to February 2013. The two courts have found that the tenant had defaulted making payment of rent.

6. It has also emerged in the evidence that husband of the plaintiff – landlady had retired from service in 2012 and had been intending to start his own business and with reference to the same, evidence had been adduced. The courts have further found that the landlady had a son and a daughter who were taking education and that the family had no alternate premises available for starting and running business.

7. On the other hand, the courts found that either after the notice or during the proceedings the tenant had not made any efforts to have alternate premises for shifting his godown from

the suit premises. The courts have also found that the defendant – tenant had been owner of various immovable properties in and around Aurangabad city and is engaged in business of electronic goods. The courts have further found that there were no financial constraints for the tenant.

8. Both the courts have dwelt upon the evidence led by the parties and have found on appreciation that the need of the landlady being *bona fide* and reasonable and comparatively hardship suffered by the plaintiff – landlady would be more than that would be suffered by the defendant – tenant in case of his eviction.

9. Learned advocate Mr. Sonpethkar submits that the appreciation of evidence by the courts may not be in tune with the evidence and as such, the same is liable to be interfered with. Although it is being so submitted, one may have to consider that it is not such a case wherein it can be said that appreciation of evidence by two courts on aforesaid grounds of eviction has been so grossly erroneous or for that matter perverse to let any exercise of revisional powers by this court in the present civil revision application. Nor the applicant has pointed out any perversity in findings on the two grounds.

10. Proceeding further, according to Mr. Sonpethkar most importantly, though in defence the tenant had specifically referred to that it was a fixed term tenancy of twenty years, the same has not at all received its due before trial court or for that matter at the appellate stage. He, however, hastens to add that may be that in respect of fixed term tenancy no arguments were advanced during trial, and contends yet arguments had indeed been advanced before the appellate court and in support of the same, decisions had also been relied upon. He submits that yet, the appellate court has not referred to this aspect involved in the matter.

11. He purports to refer to a decision of the Supreme Court in the case of *“Laxmidas Bapudas Darbar and Another V/s Rudravva (smt) and Others”* reported in (2001) 7 SCC 409 placing reliance on paragraph No. 18 thereof. He submits that in case of fixed term lease, the tenant remains protected till expiry of the period and a case for eviction would be hardly maintainable. He submits that while the written statement refers to that it was a twenty year term tenancy, there is no reflection in respect of the same before the two courts and he, therefore, submits that the revision is fit to be considered. He, as such, urges to consider the revision

accordingly. Alternatively, he requests reasonable period of six months for vacating the suit premises be given to the tenant, who is occupying the same since 2003.

12. On the other hand, Mr. S. S. Joshi, learned advocate appearing for the plaintiff – landlady submits that under the revisional powers, the court is not expected to expand scope of the proceedings to give way to the matters which had not been urged for consideration before the courts hitherto. In the present matter, he submits last part of the arguments advanced on behalf of the applicant – tenant is one such matter, and would not be amenable for consideration at all in revision. Dealing with the same further, he submits that may be it is case where there is a passing averment with respect to tenancy being of twenty years, yet no evidence in respect of the same had been led. On the contrary, it emerges that it is an admitted position that the tenant had not been in possession of any evidence at all except bare statement made by him during the course of his deposition. The tenant had been cross-examined over the same and had in fact admitted that he is not in possession of any evidence in respect of the fixed term tenancy of twenty years. He goes on to submit, Chartered Accountant had been examined, however, his evidence has not supported case sought to be made out by the

tenant. He, therefore, submits that if the tenant is not in a position to show that there had been any agreement with respect to a fixed term tenancy, in such a case, reliance being placed on decision in the case of "*Laxmidas*" (*supra*) by learned advocate for the applicant – tenant is wholly ill-conceived.

13. Apart from aforesaid, he submits that said judgment has been rendered on different factual and legal background. There is no parity or similarity between the two matters. Rent Control Act that was being considered was of Karnataka State and decision has been given with reference to the same and the factual background involved in the matter. He further refers to that the very paragraph No. 18 being relied on from the judgment refers to that even in case of fixed term contractual lease, eviction proceedings can be initiated during its subsistence or currency on the grounds as were enumerated under the Karnataka Rent Control Act. He, therefore, submits that there is absolutely no embargo for initiating eviction proceedings pursuant to statutory law.

14. Next leg of submissions of Mr. Joshi is that landlady has proved the grounds for eviction against the tenant, *viz.*, default in making payment of rent and *bona fide* requirement. Findings

of facts are based on evidence, those are hardly liable to be interfered with under the revisional powers. He submits that on the basis of evidence on record, findings have been reached and findings are not at all perverse. In the circumstances, he submits, revision is liable to be dismissed.

15. Perusal of the two judgments of trial and appellate courts hitherto shows, the courts have found that the tenant had committed default in making payment of rent and due procedure in respect of the same had been followed, of issuance of notice and institution of proceedings. On appreciation based on evidence as had been adduced the trial court found need of the landlady to be *bona fide* and reasonable, and had further adverted to that the tenant had been economically well placed and had quite a few properties in and around Aurangabad city. The appellate court as well has dealt with the grounds of eviction elaborately and had found that it is not the case wherein it can be said that need of the plaintiff is not genuine or honest. Appellate court had further considered that tenant had not made any attempt to search or arrange for alternate premises and had also found that he had been running business in the shop situated just above the suit premises and had been using the suit premises for storage purpose. The appellate court, thus,

considered that it is the plaintiff who would suffer greater hardship than the defendant – tenant.

16. Findings so rendered on aforesaid two grounds do not appear to be away from record, in the circumstances, it would not be proper for this court to meddle with the findings so recorded, under the revisional powers.

17. The ground about fixed term tenancy, now being urged with some vehemence by learned advocate for the applicant, after giving indulgence to the parties, shows that the tenant has not been in a position to lend credence to his such case by any material or evidence worth consideration except bare statements made. To such statements by tenant there is no corroboration whatsoever let alone any material in support.

18. Learned advocate Mr. Sonpethkar during the course of submissions has tried to argue that there are circumstances indicative of lending some substance for the submission about there being fixed term tenancy. For said purpose he purports to submit that while it is the case of the tenant that the tenancy had commenced in 2008, it is the case of the landlady that the tenancy had commenced in 2003. In such a case, some substance gets infused in the averment of the tenant about the

tenancy being for twenty years. However, it is difficult to consider that such a dispute over commencement of tenancy would lend credence to the case sought to be made out about twenty year tenancy. One more aspect, learned advocate purports to contend is about if the tenancy has commenced in 2003, and if it is a case that it was a three years tenancy, the proceedings for eviction have been initiated in 2013 would give an indication about the tenancy being of twenty years as contended. However, it may have to be noted that this also has no corroboration and is a friable submission being made, for, eviction proceedings have been initiated by the landlady on the ground of default in making payment of rent and upon *bona fide* need of the landlady arising.

19. On the contrary, the tenant purports to contend that it is the case of tenant about fixed term on the basis of oral agreement. In such a case, burden on the tenant is far more to prove the same. It does not appear that the tenant has been able to discharge such a burden at all. It is not a case that there is any substance or for that matter reliable substance in the case being sought to be made out for twenty year lease.

20. As such, the revision is not being entertained and is

dismissed.

21. At this stage, Mr. Sonpethkar, learned advocate for the applicant – tenant urges for sufficient period be allowed for vacating the suit premises and states that the tenant may be given six months' period for vacating the suit premises. Learned advocate for the respondent, Mr. Joshi, however, submits that the landlady is in dire and urgent need of the suit premises for starting business, which she had been waiting for since 2012-13. According to him, need has become acute and further refers to that tenant has lot of other properties in and around city, which can accommodate the needs of storage of the tenant.

22. However, looking at that the tenant is in occupation of suit premises since 2003, it may be expedient to grant six months' time to the tenant for vacating the suit premises. After completion of six months period from today, the tenant shall peacefully vacate and hand over the suit premises to the landlady personally and shall not create any impediment, hurdle and hitch, legal or factual and shall not create third party interest in the suit premises of any sort and if any such hurdle arises, the tenant would be solely responsible for the same. The applicant – tenant shall pay monthly compensation to the

landlady at the same rate as rent was being paid by him during currency of tenancy. He shall file undertaking to aforesaid effect within a period of four weeks from today and in case of failure to submit such an undertaking, it is open for the landlady to proceed with execution.

[SUNIL P. DESHMUKH, J.]