

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 199 OF 2017

Arun Piraji Mistri
Age: 45 years, Occ. Labour,
R/o. Final Plot No. 100,
Municipal House No. 107,
Balaji Peth, Jalgaon,
Tq. & Dist. Jalgaon

...Applicant

Versus

Premchand Manakchand Laddha,
Age: 60 years, Occ. Business,
R/o. 21, Janki Nagar,
In front of Vardhaman Hospital,
Jalgaon, Tq. and Dist. Jalgaon.

...Respondents

...

Mr. Anand I. Deshmukh, Advocate for applicant.
Mr. Manish Navandar, Advocate for respondent.

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[CORAM: SUNIL P. DESHMUKH, J.]

Date: 21st March, 2018

ORAL JUDGMENT :

1. Heard learned counsel for the parties.
2. Revision has been moved by the original defendant-applicant against concurrent decisions rendered

by trial as well as appellate court in proceedings initiated by the plaintiff-respondent seeking eviction of the applicant.

3. Mr. Anand Deshmukh, learned counsel for applicant/defendant purports to pose challenge to findings rendered by the trial as well as appellate court contending that the applicant's family has been residing as tenant in the suit property for the last 35 years. Applicant is tenant in the suit property from a very long time even before respondent-plaintiff had purchased the same in 2005.

4. Learned counsel for applicant states that regular civil suit no. 327 of 2011 for eviction had been instituted by plaintiff on various grounds, *inter alia*, suit property being in dilapidated condition and requires reconstruction and contending bonafide requirement.

5. The trial court has held that suit premises is in dilapidated condition. The plaintiff required for reasonable and bonafide use. If eviction is not directed, it would

cause greater hardship to plaintiff. The suit had been decreed.

6. In the appeal therefrom at the instance of applicant, appellate court had framed points for determination, similar to issues and has concurred with the findings given by the trial court on that suit property being in dilapidated condition and same being bonafide required by the plaintiff landlord and plaintiff would suffer greater hardship.

7. In the present case, he states that applicant-defendant was ready to pay the rent of the suit premises, however, respondent-plaintiff refused to accept payment of rent of suit premises. He further submits that requirement shown by the respondent-plaintiff is artificial, not bonafide. He also submits that the brothers of respondent/plaintiff are having separate businesses and have no concern with each other and applicant would suffer greater hardship in the event of his eviction. The findings rendered by the two courts are unsustainable. He submits that while the issues framed by the two courts,

have been similar, but are without any substance, so is the case in respect of two other grounds for eviction of applicant.

8. Learned counsel Mr. Manish Navandar for respondent/plaintiff contends that in the first place, findings based on evidence being not perverse, would hardly be liable to be upset in revisionary powers. He submits that it is not the case that the decision on issues about dilapidated condition, requirement being bonafide, and plaintiff's hardship are in any way unsustainable and have strong basis in evidence and have been properly so appreciated by two courts. In any case, the trial court on appreciation of documents, particularly, exhibits, 57, 83 and 85 which are building structure reports as well as exhibit-27 which is reply by defendant to plaintiff's notice, has considered that suit premises are in dilapidated condition and the same has been endorsed by the appellate court. The trial court as well has considered in paragraphs no. 19, 20,21,22,23 and 24 that evidence on record more than sufficiently bears bonafide need of landlord. The contents of decisions hitherto have not

been reproduced here in order to avoid repetition. Mr. Navandar on instructions, submits that parties have discussed about paying Rs.1,50,000/-(Rs. One lakh fifty thousand only) to the applicant on humanitarian ground.

9. Upon consideration of citations relied on behalf of parties and in the face of evidence adduced and produced, the trial court held and there had been no alternate accommodation at all available for landlord. It was found that the landlord would suffer greater hardship. The findings of trial court have been dwelt upon by appellate court and upon scanning evidence recorded by trial court, those have been maintained.

10. Perusal of two judgments does not in any way show that those are without adhering to evidence and/or the provisions of law. The findings on facts are not perverse and would not be amenable for interception under present revision. Revision application fails and is dismissed.

11. At this stage, learned counsel for applicant Mr. Anand Deshmukh states that there is marriage ceremony arranged for in the month of April, 2018, by the applicant,

and as such, requests to give sufficient time to vacate premises.

12. Learned counsel for respondent / plaintiff Mr. Manish Navandar though has opposed the request, resiles to the circumstances expecting that suit premises would be vacated after the marriage ceremony is over.

13. In the circumstances, on instructions, parties agree upon that applicant shall deliver vacant possession of suit premises from the amount deposited in this by 21st of June, 2018. Till said period, applicant shall pay compensation to respondent-plaintiff at the same rate at which it was being paid. Applicant shall not induct any third person in suit premises and would not cause any obstruction to the respondent in delivering possession. Applicant shall not create in any manner third party interest in the suit premises. Applicant shall peacefully vacate suit premises and would hand over it to the respondent as agreed upon.

14. Respondent undertakes to pay to applicant the sum of Rs. 1,50,000/- (Rs. One lakh fifty thousand only) as

voluntary human act. An undertaking to that effect be filed within eight weeks. Upon receipt of said amount under an instrument of payment, applicant shall issue proper receipt of the same to the respondent.

[SUNIL P. DESHMUKH, J.]

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