

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 217 OF 2016

Jayantilal Anandmal Kochar and others

*..Applicants..
(orig defendants.)*

Versus

*Shri Murlidhar Laxman Mistri
and another.*

*..Respondents
(Orig plaintiffs)*

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Mr R.R.Mantri Advocate for applicants.

Mr V.J.Dixit Senior Counsel I/b Mr. S.V.Dixit Senior Counsel for
respondent nos. 1 and 2.

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*Coram : N.M. Jamdar, J.
Date : 11 December 2018*

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ORAL ORDER :-

The applicants-tenants have challenged the order passed by the learned District Judge, Amalner dated 19 July 2016 and the order passed by the learned Civil Judge J.D., Amalner dated 7 October 2011. By the impugned orders, the applicants-tenants are directed to hand over the possession of the suit property.

2. The suit property is a double storied building situated at Survey No.760 at Amalner having total area of 71.1 square meters.

The respondent-landlord filed a suit seeking possession of the suit premises from the applicants on the ground that the suit premises are required by the respondent-landlord for their bonafide need, the applicant has carried out a permanent construction, has committed breach of section 108 (m) of Transfer of Property Act, and is in arrears of rent. The learned Civil Judge negated the contentions of the respondent-landlord as regard permanent construction, breach of tenancy and arrears of rent. The learned Civil Judge upheld the contentions of the respondent-landlord regarding their bonafide need and that respondents-landlord will suffer more hardship, if the decree is refused. Accordingly, by judgment and order dated 7 October 2011, the learned Civil Judge Junior Division, Amalner, decreed the suit and directed the applicants to hand over the possession of the suit premises. An appeal was filed by the applicants in the District Court, Amalner. In the appeal, the applicants have moved an application for additional evidence. The application was allowed by the learned Judge. The applicants sought to bring the details of certain properties, which according to the applicants were acquired by the respondent-landlord and his family. The learned District Judge also recorded additional oral evidence of the parties. The learned District Judge by the order dated 19 July 2016 dismissed the appeal. Thereafter, present Civil Revision Application is filed.

3. I have heard the learned counsel for the parties at length.

4. In the District Court, the only issue that was debated was the bonafide need of the respondent-landlord. The respondent-landlord had sought possession of the suit premises both for residential purpose as well as the commercial purpose. Having heard the learned counsel for the parties, I am of the opinion that, matter needs to be remanded to the appellate Court for first fresh consideration. The reasons for arriving at this conclusion are as follows.

5. The respondent-landlords have pleaded in the plaint that, they were working in one mill, which mill was to close down and the respondent-landlord have taken voluntary retirement and they have no source of income to look after their family. Respondent-landlord want to start a business in this property. It was stated that the respondent no.1 had to vacate the premises of the mill and respondent no.2 was staying in rented premises. It was stated that the applicants have acquired additional premises in their possession. The applicants filed the written statement and stated that the respondent-landlord have various properties and it is entirely incorrect to state that they have no other properties and in fact such false statement disentitles the respondent-landlord from seeking possession.

6. The learned counsel for the applicants has summarized the properties which are according to the applicants, the properties of respondent-landlord.

1. *House Pratap Mill compound.*
2. *Residential bungalow on plot No.17A in Rashtriya Mill Employees Cooperative Society Dajiba Nagar.*
3. *Bungalow on plot No.229/1.*
4. *Shop No.1 T.P. 2913 Opp. Court building in which Samarth Radium shop is run.*
5. *Shop No.5 in T.P. No.30/3 in which J.V. Travels business is running.*
6. *Shop No.6 in T.P.No.30/3 in which xerox center is run..*
7. *Two storied bungalow in Balajipura.*
8. *House on plot No.28B at Rashtriya Mill Employees Cooperative Society.*

This is disputed by the respondents. The learned counsel for the applicants relied upon the decisions in the case of Shri Hanuman Mishrimal Oswal and another Vs. Shri Chandrakant Bhagwantrao Chavan and others in CRA No.122 of 2006, *Narendra Gulabrao Zade Vs. Shicharan Ghashiram Gupta*¹ ; *Sitaram Narayan Shinde and ors. Vs. Ibrahim Ismail Rais and ors.*² ; *Tarachand Hassaram Shamdasani Vs. Durgashankar G. Shroff and ors*³ ; and *S.P.Chengalvaraya Naidu*

*Vs. Jagannath and ors.*⁴

7. Since the dispute centers around the bonafide requirement of the respondents-landlord, the aspect as to whether the respondent-landlords have other suitable premises would be a material issue. It will have to be seen whether the properties brought on record by way of evidence by the applicants belong to the respondents-landlord and their family, since it is the contention of the respondents-landlord that they need premises to start a commercial activities for supporting their family. If they are available then whether these properties are suitable for the need of the respondents-landlord. Thereafter, issue of comparative hardship would also arise.

8. In the plaint, the respondent-landlords have not mentioned many of the properties. They have been brought on record by way of written statement. Additional evidence was led in the appeal. The District Court being the final Court of facts, was required to assess the evidence. The perusal of the order passed by the District Court shows that the District Court has firstly reproduced the rival contentions, then has refereed to various decisions from

1 2011 (1) Mh.L.J.839

2 2005 (1) ALL MR 74

3 2004 (Supp) Bom.C.R.333

4 (1994) 1 SCC 1.

paragraph nos 15 to 28. Thereafter, the evidence has been referred to, however, there is no discussion qua each of the properties precisely to ascertain the above two facets i.e. whether these properties are available to the respondent-landlord and secondly whether they are suitable. The properties which were brought on record in the appeal have not been dealt with at all.

9. The main ground of the applicants is assessment of evidence regarding the bonafide need. In these circumstances, after hearing the learned counsel for the parties on 7 December 2018, it was put to the learned Senior Advocate for the respondent that case was made out for admitting the revision application, wherein the learned Senior Advocate sought time to take instructions whether the proceedings can be remanded to the District Court, since the District Court has not considered all the aspects of the matter as above. Today, the learned Senior Advocate for the respondents submitted that, he has received instructions that the matter be remanded to the District Court and requested that it may be made time bound.

10. Even otherwise, the non-consideration of material evidence by the District Court in appeal from the impugned judgment and since the District Court being the final Court of facts in these disputes, the matter will have to be remanded to the District Court.

The learned counsel for the applicants submitted that the matter should be remanded to the Trial Court. The appellate Court is fully invested with all the powers to assess the evidence. If the appellate Court is of the opinion that the matter needs to be remanded to the trial court, it is for the appellate court to decide.

11. By order dated 29 June 2017 while issuing notice this Court has directed the applicants to pay an amount of ₹ 3,000/- by way of interim compensation by depositing the same in the Trial Court. Since, the appeal is being restored and decree will be stayed during the appeal, directions to pay the amount of ₹ 3,000/- is continued for the period of one month. The learned District Judge, thereafter, will decide the amount of compensation keeping in mind the dictum of the Apex Court and the relevant material. Accordingly, following order.

ORDER

- a] The judgment and order passed by the learned District Judge-2, Amalner dated 19 July 2016 is quashed and set aside.
- b] The Regular Civil Appeal bearing no.39 of 2011 stands restored to the file of District Judge, Amalner.
- c] The parties will appear before the learned District Judge on 7 January 2019, upon the learned District Judge will make an endeavour to dispose of the appeal within a

period of six months thereafter, subject to earlier time bound commitments.

- d) All contentions of the parties are kept open. Observations made in this order are for the purpose of stressing the need for remand.
- e] Interim order staying the execution and implementation of the decree of the learned 2nd Jt. Civil Judge Junior Division, Amalner to continue, till the disposal of the appeal.
- f] The interim order fixing the compensation of @ ₹ 3,000/- (₹ three Thousand) to continue for a period of one month. Thereafter, the learned Civil Judge will fix the compensation.
- g] Civil Revision application is accordingly disposed of.
- h] Record and proceedings be sent to the learned District Court forthwith.

(*N.M. Jamdar, J.*)

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