

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

CIVIL REVISION APPLICATION (ST) NO. 40914 OF 2017

Kailash Ramchandra Suplekar
Age: 55 years, Occu. Labour,
R/o Bivhute Chawl, Chalisgaon
Tq. Chalisgaon, Dist. Jalgaon.

...APPLICANT
(Ori. Defendant)

versus

1. Ramchandra Kashinath Vibhute,
Age: 90 years, occu. Business,
R/o: Dattawadi, Opp. Main Post Office,
Chalisgaon, Tq. Chalisgaon,
District : Jalgaon. (Ori. Plaintiff)
2. Pradeep S/o Ramchandra Suplekar,
Age: 62 years, occu. Doctor,
R/o : Shivaji Nagar, Malkapur,
Tq. Malkapur, Dist. Buldhana. (Ori. Defendant)
3. Dinesh S/o Ramchandra Suplekar,
Age: 60 years, occu. Service,
R/o: Shirram, 3, Pokar Colony,
Dindori Road, Masrul,
Nashik-4. (Ori. Defendant)
4. Kalindi (Bebi) W/o Govind Shinde,
Age: 55 years, Occu. Service,
R/o : Nadi Kinara, Chalisgaon,
Tq. Chalisgaon, Dist. Jalgaon. (Ori. Defendant)
5. Sau. Pratibha w/o Subhash Hattarde,
Age: 55 years, Occu. Household,
r/o: A-303, Sun Residence,
Near Kailash Jeevan Factory,
Dhayari, Pune -411 041. (Ori. Defendant)
...RESPONDENTS

.....
Mr. L. V. Sangeet, Advocate for applicant
Mr. M. S. Shah h/f. Mr. S. P. Brahme, Advocate for respondent No.1
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CORAM : SUNIL P. DESHMUKH, J.

DATED : 6th MARCH, 2018.

ORAL JUDGMENT :-

1. Heard learned counsel for parties.
2. This revision has been preferred by the applicant i.e one of the legal heirs of original defendant against the judgment and order dated 12th July, 2017 passed by District Judge-5, Jalgaon in regular civil appeal No. 23 of 2015 confirming the judgment and order dated 18th December, 2014 passed by civil judge, junior division, Chalisgaon in regular civil suit No. 84 of 2000 thereby allowing the suit of the plaintiff.
3. After hearing, it emerges that regular civil suit no. 84 of 2000 had been instituted by present respondent No. 1 - original plaintiff seeking eviction of original defendant – Sumanabai Ramchandra Suplekar on various grounds, *inter-alia*, suit premises being required *bonafide* and reasonably by the plaintiff, commission of willful default by the defendant, erection of permanent construction by the tenant on the suit premises without consent of the landlord etc. The defendant unauthorizedly without consent of the landlord, had altered the structure of the suit premises and had closed the well, erected wall and had carried out permanent construction on the suit premises without permission of the municipal council. It was the case of plaintiff that he had moved to Chalisgaon on account of various reasons, primarily, to given proper attention to the

health of his wife who requires frequent medical treatment at Chalisgaon. So far as medical facilities are concerned, Chalisgaon is better equipped for treatment than Malegaon. The property at Malegaon had been disposed of for medical treatment of his wife and other needs of the family. He owns the suit property at Chalisgaon. In some part he had shifted, however, that had been inadequate. Apart from aforesaid, his one of the daughters had been practising lawyer, who had also been need of the suit premises.

4. The claims made by the plaintiff had been denied by defendant in written statement. She had claimed that well had been closed down by landlord as he had taken water connection. Insofar-as repairs to the suit property are concerned, those being time to time informed since landlord had neglected causing repairs.

5. The issues, *inter-alia*, with regard to default, *bonafide* requirement, greater hardship and carrying out permanent construction, had been framed by the trial court. Those were answered in the affirmative in favour of landlord. As such, eviction decree had been granted by the trial court along with directions to pay rent @ Rs. 12/- per month and pay municipal taxes.

6. The matter was carried in appeal by only three of the legal heirs from the ones left behind by the original defendant, who are the sons of original defendant. Similar points for determination, as had been framed by the trial court, were framed by appellate court. The appellate court concurred with the finding in respect of tenant having committed breach and has considered him liable to be evicted on the ground referable to section 16(1)(a) and (b) of the Maharashtra Rent Control Act, 1999 and had found that suit premises are required reasonably and *bonafide* by the plaintiff and greater hardship would be caused to the plaintiff, if eviction decree is refused. The appellate court, however, did not approve the findings in respect of default in payment of rent.

7. Mr. Sangeet, learned counsel for applicant purports to contend that the findings so recorded are not in tune with the evidence on record. He submits that the appellate court has not approved the finding in respect of default in payment of rent. He further contends that causing of repairs had been neglected by landlord and the same ought not to work against tenant. He submits that landlord had two other rooms in the suit premises, and as such, requirement of the suit premises was not really *bonafide* for occupation by him.

8. Learned counsel for respondents, however, submits that these submissions are not significant since possession of the

property in execution of decree had already been taken. He further contents that on the basis of evidence on record, both the courts have concurrently held need by the landlord of the suit premises being *bonafide* and reasonable, and there had been permanent construction and alteration of the suit premises without consent or written permission of the landlord, which is in breach of mandatory provisions of law as appearing in Maharashtra Rent Control Act, 1999. Both courts had scanned the evidence on record and rendered the findings in this respect. Nothing has been placed on record by the tenant to show that prior permission or written consent had been sought at all at any point of time. He submits that it is emerged that landlord had moved to Chalisgaon for treatment of his wife, practice of his one of the daughters and various other family needs, which are not seriously disputed. In the circumstances, decisions rendered by the courts below are not liable to be interfered with by this court under its revisional powers. He further refers to that even otherwise it would emerge that none of the sons had been residing at Chalisgaon, on the addresses, as are appearing in the title clause of the suit. Mischievously, the address of the present applicant is being shown at Chalisgaon, after decision had been rendered by the trial Court. He, therefore, submits that applicant is not occupying the suit premises and had let the execution go on and landlord has taken over possession of the suit premises.

9. Having regard to aforesaid, it appears that there is no dispute about the plaintiff having moved to Chalisgaon for various reasons i.e. medical attention to health of his wife, practice of one of the daughters and other family needs.

10. It further appears that premises in occupation had been falling short whereas it appears that only applicant approached this court and his other brothers have not supported him in revision. The applicant appears to have been served during the proceeding before trial Court pursuant to the address appearing in title clause. There appear to be alterations to the suit premises in absence of written consent, which have been appreciated by the courts below. It further appears that decree has been executed. In the circumstances, it does not appear to be a case wherein revisional powers of this court are required to be invoked and reverse the decisions hitherto. The revision application, therefore, deserves to be dismissed.

11. Accordingly, revision application stands dismissed.

Sd/-
[SUNIL P. DESHMUKH]
JUDGE