IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 405 OF 2017

Smt. Jeegarbi Shikandar Sayyad ...Applicant
Versus
Dr.smt. Sunita Sachin Patil ...Respondent

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Mr.Yuvraj P. Narvankar, Advocate for the Applicant.
Mr. Swaroop M. Karade, Advocate for the Respondent.

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CORAM : R. G. KETKAR, J.

DATE : 27th JUNE, 2018

P.C.

1. Heard Mr.Yuvraj Narvankar, learned counsel for the applicant and Mr.Swaroop Karade, learned counsel for the respondent, at length.

2. By this application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.') the applicant, hereinafter referred to as the 'defendant', has challenged the judgment and decree dated 27.2.2015 passed by the learned 10th Jt. Civil Judge, Junior Division, Kolhapur in R.C.S. No.367/2011 as also the judgment and decree dated 28.2.2017 passed by the Principal District Judge, Kolhapur in R.C.A. No.131/2015. By these orders, the Courts below decreed the suit instituted by the respondent, hereinafter referred to as the 'plaintiff',

and directed the defendant to hand over possession of one room admeasuring 169 sq. ft. equivalent to 16.00 sq. mtrs. situate in C.T.S. No.2191/5 admeasuring 36.80 sq. mtrs as more particularly described in paragraph-1 of the plaint (for short, 'suit premises'). The plaintiff had purchased the property in 'C' Ward within the municipal limits of Municipal Corporation of City of Kolhapur (for short, 'Corporation'), namely, City Survey No.2191/1 admeasuring 11.70 sq. mtrs, 2191/2 admeasuring 15.00 sq. mtrs., 2191/3 admeasuring 15.00 sq. mtrs., 2191/4 admeasuring 20.90 sq. mtrs, 2191/5 admeasuring 36.80 sq. mtrs. and 2191/6 admeasuring 65.40 sq. mtrs., in all admeasuring 164.80 sq. mtrs. together with 50 years old structure from (i) Ashok Anant Chougule, (ii) Varsha Chandrakant Kamerkar, (iii) Subhash Anant Chougule, (iv) Smt. Vanita Mohan Chougule, (v) Sneha Mohan Chougule and (vi) Anita Anil Kale on 28.10.2010 (for short, 'suit building'). The Courts below have decreed the suit on the ground that the plaintiff requires the suit premises reasonably and bonafide as contemplated by Section 16(1)(g) of the Maharashtra Rent Control Act, 1999 (for short, 'Act').

3. In support of this application, Mr. Narvankar strenuously contended that the requirement pleaded by the plaintiff is neither reasonable nor bonafide. In fact the plaintiff has not come to the Court

with clean hands. The plaintiff has suppressed availability of several premises which can meet her need. The Courts below were, therefore, not justified in decreeing the suit under Section 16(1)(g) of the Act.

4. Mr. Narvankar has taken me through the discussion of the trial Court's judgment dealing with the ground of eviction under Section 16(1)(g) of the Act from paragraph-19 onwards. In paragraph-23, the learned trial Judge dealt with the contention of the plaintiff that Disha Diagnostic Center is not owned by her. The learned trial Judge considered the certificates of registration with Assistant Commissioner of Labour, Kolhapur (Exhibits-102 and 103) showing that said diagnostic center belongs to the plaintiff and her husband. The learned trial Judge further observed that though the defendant has established that said diagnostic center belongs to the plaintiff, still the defendant has not proved that the premises of diagnostic center are sufficient for the plaintiff. The learned trial Judge thereafter observed that the plaintiff also denied that the premises of diagnostic center are sufficient for carrying on her medical practice.

5. Mr. Narvankar further submitted that in paragraph-31, the learned trial Judge observed that if the plaintiff does not get possession of the suit premises, she will not be in a position to pursue her medical practice and consequently her career will come to an end. He submitted

that in contrast in paragraph-21, the learned District Judge observed that the building abutting the suit building belongs to the plaintiff and her husband. Though the plaintiff claimed to have no concern with the diagnostic center, the documentary evidence on record indicates that the pathological lab in the premises of Disha Diagnostic Center is registerd in the plaintiff's name (Exhibit-102), while Disha Diagnostic Center belongs to her husband (Exhibit-103). The learned District Judge observed that the defendant is, therefore, right in submitting that the plaintiff could very well start her trauma center in the premises of Disha Diagnostic Center. It was also observed that the premises of Disha Diagnostic Center admeasures around 5000 sq. ft. and pending suit some additional construction was made thereto. He, therefore, submitted that the learned District Judge was also not justified in confirming the trial Court's judgment thereby decreeing the suit under Section 16(1)(g) of the Act.

6. Mr. Narvankar submitted that in paragraph-22, the learned District Judge noted that C.T.S. No.14A/1/11 originally belonged to the father-in-law of the plaintiff and after demise of plaintiff's father-in-law said property is inherited by the plaintiff's husband and his mother. Apart from that 7/12 extracts at Exhibits-27/5 to 27/8 in respect of four agricultural lands standing in the name of the plaintiff and her husband

were produced on record. Thus there are several premises available at the disposal of the plaintiff which will meet her requirement. As against this, the defendant is occupying the suit premises admeasuring 169 sq. ft.. He submitted that the plaintiff had instituted suits against other tenants in C.T.S. No.2191/1 to 4 & 2191/6. While carrying out demolition of the structures in possession of the tenants, the plaintiff had removed the roof as also had thrown away the articles in the suit premises. The defendant has, therefore, set up counter claim for possession of the premises which were illegally taken and for restoration of the premises to its original position.

7. Mr. Narvankar further submitted that even otherwise in view of Section 30 of the Act, the plaintiff cannot be allowed to convert residential premises into commercial premises. As far as the question of comparative hardship is concerned, having regard to the fact that the defendant is in occupation of 169 sq. ft. as against the plaintiff who is in possession of premises of Disha Diagnostic Center admeasuring 5000 sq. ft. along with her husband as also having regard to the fact that the plaintiff has obtained possession from four tenants in the suit building, greater hardship will be caused to the defendant by passing the eviction decree. He submitted that basically the plaintiff proposes to demolish the suit building and use the premises for parking purposes and not for

construction of a new building for running a trauma center.

8. In support of his submission that as the plaintiff has suppressed availability of several suitable premises, she is not entitled to decree of eviction, he relied upon the decision of this Court in **Vasant Mahadeo Gujar v. Baitulla Ismail Shaikh and another, 2016(4) ALL MR 174** and in particular paragraphs-54 to 58. He, therefore, submitted that application requires consideration.

9. On the other hand Mr. Karade supported the impugned orders. He submitted that there were in all five tenants in the suit building. The plaintiff had instituted suits against all the tenants including the defendant herein. As far as other tenants are concerned, during pendency of the suits the parties therein entered into compromise. The tenants therein vacated and handed over possession of the premises in their possession to the plaintiff. The premises in possession of these tenants have been demolished. The entire premises are open except the suit premises admeasuring 13 ft. x 13 ft. He denied the contention advanced on behalf of the defendant that after demolishing the suit building the plaintiff intends to use the premises for parking purposes. He submitted that the plaintiff intends to demolish the existing structure and erect a new building for the purpose of

running a trauma center. He submitted that after appreciating the evidence on record, the Courts below have concurrently decreed the suit by accepting the need pleaded by the plaintiff is both reasonable and bonafide. Said finding cannot be said to be a perverse finding. Merely because on the basis of evidence on record another view is possible that itself is no ground for invocation of powers under Section 115 of C.P.C.

10. Insofar as the contention based on Section 30 of the Act is concerned, he invited my attention to the trial Court judgment and submitted that no contention was advanced in the trial Court. Said contention was advanced for the first time before the District Court. He submitted that the District Court has noted that the plaintiff intends to demolish the existing structures for erecting new building for running a trauma center. Thus the plaintiff will not be using the suit premises for a commercial purpose which were used for a residential purpose. In short he submitted that Section 30 of the Act is not at all attracted in the present case.

11. I have considered the rival submissions advanced by the learned Counsel for the parties. I have also perused the material on record. As noted earlier the plaintiff had purchased C.T.S. No.2191/1 to 6, details whereof are as under :

Sr. No.	CTS No.	Area [In square meters]
1.	2191/1	11.70
2.	2191/2	15.00
3.	2191/3	15.00
4.	2191/4	20.90
5.	2191/5	36.80
6.	2191/6	65.40
	Total	164.80 sq. mtrs.

12. The plaintiff had purchased C.T.S. No.2191/1 to 6 on 28.10.2010. She had instituted Regular Civil Suit Nos.366/2011, 368/2011, 369/2011 and 370/2011 for recovery of possession of the premises situate in C.T.S. No.2191/1 to 4 & 2191/6. It has come on record that the parties therein entered into compromise and the tenants therein have handed over possession of their respective premises to the plaintiff.

13. In paragraph-22, the learned District Judge observed that the respective premises in possession of the tenants in C.T.S. Nos.2191/1 to 4 & 2191/6 were demolished and as such the entire premises are open except the suit premises admeasuring 13 ft. x 13 ft. In paragraph-31, the learned trial Judge noted that the plaintiff had instituted suits against the tenants in C.T.S. Nos. 2191/1 to 4 & 2191/6 *inter alia* contending that she had purchased the suit building only with a view to

constructing a building there for running a trauma center. Thus the plaintiff has established that she requires the suit premises reasonably and bonafide. In paragraph-24, the learned District Judge also referred to the fact that the plaintiff had purchased the suit building for running a trauma center and for that purpose she had instituted suits for eviction of other tenants. Almost entire premises are in possession of the plaintiff and the plaintiff now only requires vacant possession of the suit premises with a view to going ahead with her plan.

14. Insofar as the trial Court judgment is concerned, the learned trial Judge has considered the ground of bonafide and reasonable requirement as also the question of comparative hardship from paragraphs-19 to 32. In paragraphs-19 and 20, the learned trial Judge noted that the plaintiff wants to construct a trauma center. For running a trauma center, installation of heavy machinery, such as, M.R.I. machine, Mamography machine, C.T. Scan, Endoscopy, Colonscopy, operation theater, generator and other similar instruments is necessary. The requirement of the plaintiff is about 1700 sq. ft. to 2000 sq. ft. land surface and she is M.D. (Anesthesia). The plaintiff, therefore, reasonably and bonafide requires possession of the suit premises. The learned trial Judge noted that the plaintiff's husband is M.D. (Radiologist) and for last 10 years is running Disha Diagnostic Center in a building abutting the

suit building. The learned trial Judge referred to filing of suits by the plaintiff against other tenants and also entering in compromise with other tenants.

15. In paragraph-21, the learned trial Judge noted that the plaintiff had claimed possession from the tenants on the ground that she wants to demolish the existing structure and erect a new building for running a trauma center. The learned trial Judge, therefore, observed that the plaintiff has established that her need is both reasonable as well as bonafide. The learned trial Judge referred to the following decisions :

[i] **Nikhil s/o Rajendra Jan vs. Surekha wd/o Ashok Moundekar and others, 2014(3) Mh.L.J. 777**, where it is held that availability of shop block owned by the father of the plaintiff cannot be a ground for denying the decree for eviction/possession to the plaintiff to start his own business in his own shop block. The plaintiff cannot be put at the mercy of any other person when he is having his own property and wants to start business in his own property.

[ii] **Rameshwar Nanakram Prajapal vs. Sundrabai Keru Ghadage, 2013(2) MLJ 173**, where it is held that it is well settled law that the landlord is the best Judge of his residential requirement and has a complete freedom in the matter. It is no concern of the Courts to indicate to the landlord how and in what manner he should live or to

prescribe for him a residential standard of their own.

[iii] **Manohar Auto Stores, Amravati and others vs. Kalpesh Hemantbhai Shah, 2010(3) Mh.L.J. 331,** where it is observed that when the landlord indicates his need of the premises it need not be looked at with suspicion, and he need not be advised by the tenant as to how he should satisfy his need by gong to other premises.

[iv] **Gurulingappa Sharnappa Birajdar vs. Ashokkumar Gurulingappa Birajdar and another, 2009(3) Mh.L.J. 661,** where it is observed that merely because the landlord has recently purchased the suit property with full knowledge that the suit premises were already occupied by a tenant, it would not preclude the landlord from pursuing remedy of possession on the ground of bonafide and reasonable requirement.

[v] **Chotumal Bahiramal Sindho vs. Baburao Vinayak Mohadkar, 2009(4) Mh.L.J. 131**, where it is observed that the owner of the property cannot be told that he should be content with such a small space so as to accommodate his two sons to settle in life. It is well established position that it is neither open to the tenant nor to the Court to dictate its terms as to how the requirement of the landlord should be modulated. The landlord is the best judge in that behalf. Suffice it to observe that neither the delivery of possession of only two khans to

landlord would result in satisfying the requirement of the landlord for his two sons.

16. In paragraph-22, the learned trial Judge dealt with the contention of the defendant that in the building adjacent to the suit building, the plaintiff's husband is running Disha Diagnostic Center in an area admeasuring 5000 sq. ft. and also considered various judgments relied by the defendant. After considering the judgments relied by the defendant, in paragraph-23 the learned trial Judge observed that though the defendant came with the case that C.T.S. No.2191/1 to 6 is purchased by the plaintiff only for using the suit premises for parking purposes, said fact is not established by the defendant. The learned trial Judge also noted that the defendant has not produced any material to establish that the premises of Disha Diagnostic Center are sufficient for meeting the requirement of the plaintiff to establish a trauma center. Mr. Narvankar submitted that having regard to the fact that the premises of Disha Diagnostic Center admeasures 5000 sq. ft., said finding is perverse. It is not possible to accept this submission. In fact in the same paragraph the learned trial Judge noted that the plaintiff denied the suggestion that the premises of Disha Diagnostic Center are sufficient for her trauma center.

17. In paragraphs-24 and 25, the learned trial Judge has dealt with evidence of PW-2 Avinash Bhikusheth Pandharpure, Architect and Partner of Pandharpure and Patil Associates, who had prepared building plans at Exhibit-38. The learned trial Judge has minutely considered the proposed construction shown in Exhibit-38. After considering the evidence of the defendant's witness, in paragraph-26 the learned trial Judge observed that they have not challenged the construction proposed in the building plans at Exhibit-38.

18. In paragraph-27, the learned trial Judge observed that the contention of the defendant that the plaintiff does not require possession of C.T.S. No.2191 for erection of a building for running a trauma center as the facilities of C.T. scan, digital X-ray, Ultra-Sonography are available in Disha Diagnostic Center, is unacceptable. The learned trial Judge observed that as the plaintiff has purchased C.T.S. No.2191, she is entitled to use said property as per her requirement. The defendant cannot dictate the plaintiff the manner in which said property is to be used. In paragraph-29, the learned trial Judge has referred to the decision relied by the plaintiff in support of her contention that she requires the suit premises for running a trauma center. In paragraph-30, the learned trial Judge dealt with the judgments relied by the defendant. In paragraph-31, the learned trial Judge has observed that the plaintiff

had instituted suit against other tenants for running a trauma center. The learned trial Judge observed that if the plaintiff does not get possession of the suit premises, she will not be in a position to pursue her medical practice and consequently her career will come to an end. Thus the plaintiff has established that she requires the suit premises reasonably and bonafide.

19. The learned trial Judge further observed that the defendant has not adduced any evidence to establish that she made any search for securing alternate accommodation. The learned trial Judge, therefore, held that the plaintiff will suffer greater hardship in case the eviction decree is not passed. Insofar as the District Court is concerned, the ground of reasonable and bonafide requirement is considered by the learned District Judge from paragraphs-18 to 34. In paragraph-21, the learned District Judge referred to the fact that the plaintiff's husband is running Disha Diagnostic Center where pathological lab is registered in the plaintiff's name and further observed that the defendant is right in submitting that the plaintiff could very well start her trauma center in the premises of Disha Diagnostic Center. Mr. Narvankar, therefore, submitted that as the premises of Disha Diagnostic Center admeasures around 5000 sq. ft. and pending suit some additional construction was also made thereto, the plaintiff can very well start her trauma center in

the premises of Disha Diagnostic Center.

20. Mr. Karade submitted that additional construction made on the top of the premises of Disha Diagnostic Center is meant for living-room for staff and in paragraph-21 the learned District Judge observed that perusal of the sanctioned plan indicates that entire premises of Disha Diagnostic Center have been in use and occupation. In paragraph-22, the learned District Judge referred to various suits filed by the plaintiff against other tenants and her entering into compromise with them and the fact that except suit premises admeasuring 13 ft. x 13 ft., rest of the entire premises are open. The learned District Judge also dealt with other properties, which according to the defendant, are available to the plaintiff for running a trauma center. In paragraphs-23 and 24, the learned District Judge observed that the plaintiff is the best judge of her own requirement and has complete freedom in the matter. It is no concern of the Court to dictate to the landlord how and in what manner he would live or prescribe for him a residential standard of their own. Same would be the case in respect of a landlord intending to use for the professional purposes. In paragraph-24, the learned District Judge noted that the plaintiff had purchased the suit building for the very purposes. In paragraphs-25 to 31, the learned District Judge dealt with the contention based on Section 30 of the Act. In paragraph-27, the

learned District Judge noted that the written statement filed by the defendant is silent to take umbrage of Section 30 of the Act. Said point was also not canvassed by the learned trial Judge and it was argued for the first time in appeal.

21. In paragraph-28, the learned District Judge noted that the defence under Section 30 of the Act is based on a factual matrix and the same was not raised in so many words in the written statement. The learned District Judge dealt with the assertions made by the plaintiff in the plaint to the effect that the suit premises are not not being used by the defendant for any business. The learned District Judge also referred to averments in the written statement to the effect that the defendant is in possession of two rooms, one of them was business purpose and other for residence. As noted earlier, the plaintiff is not intending to use suit premises for commercial purposes, namely, for running a trauma center. The plaintiff proposes to demolish the structures existing in C.T.S. No.2191/1 to 6 and in fact had demolished the structures in C.T.S. No.2191/1 to 4 & 2191/6, save and except C.T.S. No.2191/5 where the suit premises is situate and erect a building with a view to running a trauma center. The submission based on Section 30 of the Act is, therefore, wholly misconceived.

22. In paragraphs-32 and 33, the learned District Judge dealt

with other premises which according to the defendant are available for setting up a trauma center as also her contention that the plaintiff has suppressed availability of these premises, she is not entitled to eviction decree. The learned District Judge did not accept said contention. In paragraphs-36 to 38, the learned District Judge dealt with the question of comparative hardship and observed that the defendant did not adduce any evidence to indicate that she was unable to secure alternate premises in the city of Kolhapur. Mere one line evidence that if the eviction decree is passed, the defendant would suffer greater hardship is not sufficient for discharging the burden. The learned District Judge, therefore, observed that the defendant failed to prove that greater hardship would be caused by passing the eviction decree than refusing to pass it.

23. Mr. Narvankar relied upon the decision of this Court in **Vasant Gujar** (supra) and in particular paragraphs-54 to 57. In paragraph-56 of that report this Court noted the submission of the landlord that failure to disclose is not fatal, if it is establish that a decree for eviction can be sustained even if disclosure were to be made. This submission was dealt with by observing that that was not a situation in the present case. Apart from this property, there are several other properties in the occupation or control of the respondent-landlords.

Reference was also made to landlords running a a hotel having name and style as "Hotel Blue Star" and other businesses like STD booth, sale of handicrafts, Lucky Restaurant which was not disclosed in the plaint. In paragraph-57, reference was made to another property. In my opinion, said decision is clearly distinguishable in the facts of the present case. I have already indicated that the plaintiff had purchased C.T.S. No.2191 way back in the year 2010 with a view to erecting a new building. There were five tenants in C.T.S. No.2191. The plaintiff instituted suits against all the tenants including the defendant herein. This reiterates that she requires the suit premises otherwise there was no occasion for the plaintiff to institute suits against all the tenants. In view thereof, the decision in the case of **Vasant Gujar** (supra) is not applicable.

24. Mr. Narvankar relied upon the decision of this Court in **Avinash Mhapankar** (supra) as also Section 30 of the Act. Section 30 of the Act lays down that the landlord shall not use or permit to be used for a commercial purpose any premises which on the date of the commencement of the Act were used for a residential purpose. The learned District Judge has dealt with this aspect in paragraph-27. Apart from that as noted earlier, the plaintiff wants to demolish the existing structure and erect a new building. In view thereof, the embargo under

Section 30 of the Act will not be attracted as the plaintiff will not be converting the suit premises from residential user into commercial user.

25. As noted earlier, the entire thrust of defendant's argument is that the building abutting the suit building belongs to the plaintiff and her husband where Disha Diagnostic Center is operated. The premises of Disha Diagnostic Center admeasures around 5000 sq. ft. It has come on record that the pathological lab in this premises is registered in the plaintiff's name. The entire premises of Disha Diagnostic Center have been in use and occupation. The plaintiff is M.D. in Anesthesia. Her husband is M.D. in Radiology. The plaintiff has every right to pursue her career by opening a trauma center in a premises which exclusively belongs to her. With that end in view she had purchased the suit building in the year 2010. Not only that she had instituted suits against all the tenants including the defendant herein. She had obtained possession from other tenants and the structures in possession of those tenants were also demolished. But for possession of the suit premises, construction of new building cannot be undertaken. I, therefore, do not find that the plaintiff's need is unreasonable and malafide. It also needs a mention that the matter was adjourned to enable the parties to explore the possibility of settlement as the plaintiff had entered into the compromise with other tenants. However, the learned Counsel for the

parties reported that settlement is not possible and accordingly proceeded to advance detailed submissions.

26. In view thereof, I do not find that the Courts below committed any error in decreeing the suit. The defendant is not in a position to demonstrate that the findings recorded by the Courts below are perverse, being based upon no evidence or that they are contrary to the evidence on record. The defendant is also not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the Courts below. Merely because on the basis of evidence on record another view is possible, that itself is no ground for invocation of powers under Section 115 of C.P.C. Hence, no case is made out for invocation of powers under Section 115 of C.P.C. Civil Revision Application fails and the same are dismissed with no order as to costs.

27. At this stage, Mr. Narvankar orally applies for stay of the eviction decree for a period of eight weeks from today. He, however, states that the applicant is not ready and willing to give usual undertaking to this Court. In view thereof, oral application for stay is rejected. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)