

psv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL REVISION APPLICATION NO.344 OF 2017
IN
REGULAR CIVIL APPEAL NO.39 OF 2014
IN
R.C. SUIT NO.14 OF 2008**

Dhondu Shriram Jagushete ..Applicant
Vs.
Vishwanth Sakharam Jagushete & Ors. ..Respondents

Mr.Suresh K. Pathare for Applicant.
Mr.S.B. Shetye for Respondent Nos.1 to 3.

**WITH
CIVIL APPLICATION NO.224 OF 2017**

CORAM : G.S. KULKARNI, J.

DATE : 15th JANUARY, 2018

P.C.:

1. Heard the learned Counsel for the parties.
2. This is a revision application of the tenant who suffers decree as passed by the Senior Division, District Ratnagiri, in Regular Civil Suit No.14 of 2008 decreeing the landlord suit for possession filed under the Maharashtra Rent Control Act, 1999. The decree has been confirmed by the learned District Judge-I, Ratnagiri in Regular Civil Appeal No.39 of 2014.
3. The respondents/landlords had instituted the suit in question against the applicant seeking a decree of eviction *inter-alia* on the

ground of arrears of rent and on the ground of bonafide need of the suit premises. The suit premises, is a wooden stall where the applicant/org. defendant was conducting his business of selling Pan, Tobacco and other ancillary items. The tenancy in question is the monthly tenancy. By suit notice dated 10th October 2007, the respondents/org. Plaintiffs had called upon the applicant/org. defendant to make payment of the arrears of the rent which according to the respondents/org. Plaintiffs had become payable from October 1993, the applicants tenancy was also terminated and the applicant was called upon to vacate the suit premises on or before 31st October 2007 failing which, legal proceeding will be instituted. The suit in question came to be instituted on 16th April 2008. The learned trial Judge framed specific issues in regard to the bonafide requirement and the default in payment of the rent by the applicant/defendant. The issues were also framed in regard to the non-user and on the issue of the hardship.

4. Considering the evidence on record, the learned trial Judge held that the respondents/org.plaintiffs have proved their case on the grounds namely of bonafide requirement, default in payment of rent as also on the issue of hardship. By the judgment and order dated 28th March 2014, the suit came to be decreed in the following terms:-

- “1. The suit is decreed with costs.
2. The defendant is evicted from the suit premises and the defendant is directed to hand over vacant peaceful possession of suit premises to plaintiffs within three months from today.
3. If the defendant does not vacate the suit premises as mentioned in clause (2) above, the plaintiffs are entitled to recover the possession of suit premises from defendant through court by following due process of law.
4. The plaintiffs are entitled to rent deposited by defendant in this suit after appeal period is over.
5. The plaintiffs are entitled to future mesne profits for the period from 1st April 2014 till receiving vacant possession of suit premises.

6. Decree be drawn up accordingly.”

5. Applicant approached the District Court in appeal and by the impugned judgment and order dated 24th November 2016, the appellate Court has confirmed the findings of the learned trial Judge thereby dismissing the appeal. It is against these findings, the applicant/defendant is before this Court in the present proceeding.

6. Learned Counsel for the applicant/defendant in assailing the findings of the courts below has urged two fold contentions. Firstly he submits that the suit notice dated 10th October 2007 itself is illegal as it is not issued as per the provisions of Section 106 of Transfer and Property Act, 1882. It is contended that statutory period of 90 days as per the provision of Section 15(2) of the Maharashtra Rent Control Act 1999 has also not been specified and therefore, on the basis of such notice, suit in question could not have been instituted. The second contention as urged on behalf of the applicant is that the suit premises is wooden stall and thus, considering definition of premises as provided under Section 7(9) of the Maharashtra Rent Control Act 1999, the suit itself is not maintainable. It is next submitted that the said business is the only source of livelihood for the applicant/defendant and thus, the decree against the applicant should be interfered with on this count on a sympathetic consideration.

7. On the other hand, learned Counsel for the respondents/landlord has opposed this application. In regard to the contentions as urged on behalf of the applicant, it is submitted that none of the contentions is relevant, firstly for the reason that these contentions were never raised before the trial Court and secondly, there are clear findings of fact recorded by the courts below that the applicant/defendant is having alternate premises. It is thus, submitted that findings of the courts

below need no interference and the application be dismissed.

8. Having heard the learned Counsel for the parties and with their assistance, having perused the judgments of the Courts below I am not and persuaded to accept the submission as urged on behalf of the applicant. Learned Counsel for the applicant submits that the issues in regard to the validity of notice as also as to whether the provisions of Maharashtra Rent Control Act would apply in view of the nature of the premises were never urged before the Courts below, and thus naturally the Court has not considered these issues. As regards the contention in regard to the validity of notice, though it is not asserted by the trial Court for that matter before the appellate Court, the contention cannot be accepted. The tenancy in question was a monthly tenancy which can be terminated by a notice of 15 days as section 106 of the Transfer of Property Act, 1882 would require. It is also not in dispute that the suit in any case was instituted at least 6 months after issuance of the suit notice dated 10th October 2007 on the ground of arrears of rent, bonafide requirement and also on the issue of hardship.

9. If this be the position then the argument as made on behalf of the applicant that 90 days period as per the requirement of Section 15(2) of the Maharashtra Rent Control Act was not complied by the respondent cannot be accepted. The requirement of Section 15(2) is that no suit for recovery of possession shall be instituted by landlord against tenant on the ground of non-payment of standard rent or permitted increases until the expiration of 90 days after notice in writing of the demand of standard rent has been served upon the tenant in the manner provided in Section 106 of Transfer of Property Act, 1882. Admittedly, the suit was instituted after 6 months and thus the statutory requirement of providing 90 days to the applicant to make payment of the arrears of rent stood complied before the institution of the suit in question.

10. Both the Courts have recorded findings in favour of the respondents/plaintiffs on the issues of arrears of rent and both the requirement stating that they are the owners of the suit premises. Learned Counsel for the respondents has drawn my attention to the finding as recorded in paragraph 19 of the judgment of the learned Trial Judge wherein the learned trial Judge has observed that applicant/defendant has admitted in cross-examination that there are 4 tenants in his house and he has given two rooms to every tenant. It is further observed that the said admission of the applicant/defendant shows that his family has separate income from the rent paid by tenants residing in his house. It is observed that it cannot be said that applicant/defendant and his wife are entirely depending upon the income from the business conducting suit in stall. It is also observed that the applicant/defendant has admitted in cross-examination that he owned 10 to 12 acres land along with his three brothers at village Ozare and he cultivates the land. Thus, applicant/defendant was not depending only on the income from the suit stall, as rightly held by the Courts below.

11. The next ground as urged on behalf of the applicant is that the premises being wooden stall, Maharashtra Rent Control Act would not be applicable in view of the provisions of Section 7(9) of the Act, also cannot be accepted. Though this contention was not also raised before the Courts below it can be considered as an issue by law. It is not dispute that the wooden structure is standing on the land. The issue is no more ras-intra in view of the decision of Supreme Court in case of **A. Satyanarayan Shah Vs. M. Yadgiri**¹ the Supreme Court in paragraph 5 and 6 of the said case has observed thus:-

“5. We have perused the impugned judgment of the High Court as also the record of proceedings. In our opinion, the High Court has rightly held that so far as the

1 (2003) 1 SCC 138

finding on the question of bonafides of the landlord is concerned, the same was purely a finding of fact and hence concluded by the judgment in appeal. The serious question that arises for decision in this appeal is whether the land along with the structure standing thereon falls within the definition of 'building' or not?

6. It will be useful to notice the finding arrived at by the learned Chief Judge in this regard. Admittedly, the structure is wooden and stands on the ground. The learned Chief Judge has held the structure (called 'dabba', that is, a box) is a permanent structure, that it belongs to the landlord by purchase and that the tenant-respondent had attorned the tenancy in favour of the landlord-appellant for the demised structure and has been paying the rent to him and that the wooden structure was in existence there from the very beginning and it was the property of the vendor of the landlord sold to the present landlord-appellant along with the main building. Thus, in view of the findings arrived at by the Controller as also by the Appellate Court, there is no manner of doubt that the wooden structure is a permanent structure standing on the land.”

(emphasis supplied)

12. In the circumstances there is no material irregularity or any perversity in the findings recorded by the Courts belows. I find no merit in the Civil Revision Application. The Revision Application is accordingly dismissed. No costs.

13. The applicant/defendant shall hand over the possession of the suit premises to the respondents/landlords within a period of 8 weeks from today.

[G.S. KULKARNI, J.]