

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.633 OF 2017**

Balasaheb Ramchandra Lokhande	.. Applicant
VS	
Vijaykumar Raghunath Kulkarni	.. Respondent

Mr.Kedar Lad for Applicant
Mr.Yuvraj Narvankar for Respondent

with **CIVIL REVISION APPLICATION NO.651 OF 2017**

Babasaheb Laxman Kashid	.. Applicant
VS	
Vijaykumar Raghunath Kulkarni	.. Respondent

Mr.Suresh Kamble for Applicant
Mr.Yuvraj Narvankar for Respondent

Coram : G.S.KULKARNI, J.
Date : 22 JANUARY 2018

P.C

Heard Mr.Lad learned counsel for the applicant and
Mr.Narvankar learned counsel for the respondent.

2. The challenge in this civil revision application is to the judgement and order dated 23.5.2017 passed by the learned District Judge-5, Kolhapur whereby the appeal as filed by the applicant-

tenant against the judgement and order dated 2.5.2015 passed by the 13th Joint Civil Judge, Junior Division, Kolhapur decreeing the respondent's suit for possession stands dismissed.

3. The respondent had filed Regular Civil Suit no.2049 of 2012 against the applicant-tenant seeking possession of the suit premises which admeasures 11 x 7 sq.ft situated on C.S.No.2703/C A Ward, Kolhapur on the ground of arrears of rent and bonafide requirement. The parties led their evidence. The learned trial Judge on the issue of reasonable and bonafide requirement of the suit premises recorded a finding in favour of the respondent-landlord holding that the bonafide requirement of the respondent was genuine in as much as the need for the respondent's son Yogendra PW 2 who was undertaking outdoor work in photography for want of premises. It was also held that the daughter Komalata PW 1 was doing the business of selling ayurvedic medicines from rented premises and was in need of the suit premises.

4. On behalf of the respondent-landlord, his son PW-2 Yogendra was examined as also the daughter Komalata PW-1 was

examined. The leave and licence agreement dated 9.5.2011 in respect of the shop which was taken on rent by the daughter Komalata PW-1 also stood proved. It had also come on record that there are 10 members in the respondent-landlord's family and all of them were residing together.

5. Before the trial Court, DW-1 Prabhakar-defendant in his cross-examination specifically admitted that the respondent-landlord had retired as a clerk and had married sons and unmarried daughter who were residing together. He also admitted that PW-1 Komalata carries on the business of selling ayurvedic medicines in rented premises situated at the backside of the suit premises. He has also admitted that PW-2 Yogendra son of the respondent carried out door business of photography and that in the other two shops adjacent to the suit premises, they were tenants against whom eviction suits were pending.

6. The learned trial Judge observed that the respondent-landlord had brought on record sufficient evidence of the bonafide requirement of the suit premises which included the requirement of

the 10 members in his family including married son, and unmarried daughter. It was held that all these factors indicated that the requirement was bonafide and that the bonafide requirement of the suit premises was certainly for the business of PW-2 Yogendra and/or for the unmarried daughter Komalata PW 1. Further as regards the issue of hardship, the learned trial Judge has observed that DW-1 Prabhakar has made a categorical statement in his evidence that he has not made any efforts to search for any another suitable premises for his business after receipt of the suit notice. Though DW-2 Madhav Bagalkote deposed that the defendant had inquired about acquiring alternate accommodation and despite inquiry he could not get a shop on rent as shops are available in the area at higher rate, this statement was not accepted by the learned trial Judge on the background of the clear admission of DW-1 Prabhakar that he had not searched any alternate shop for his business. The learned trial Judge held that considering the evidence on record certainly, hardship would be caused to the respondent-plaintiff. The learned trial Judge accordingly decreed the suit in the

following terms :-

1. *“Suit is decreed with costs as under :*
2. *Defendant shall deliver vacant and peaceful possession of the suit premises to the plaintiff within two months from the date of this order.*
3. *An inquiry be directed in respect of the mesne profits as per Order Rule 12 (c) of the Code of Civil Procedure from the date of filing of this suit till the actual delivery of the possession to the plaintiff of the suit premises by the defendant.*
4. *Decree be drawn up accordingly.”*

7. The above decree as passed by the learned trial Judge has been confirmed by the appellate Judge. On the ground of bonafide requirement the learned appellate Judge has clearly observed that the need of the respondent that the suit premises of DW 2-Yogendra and DW-1 Komlata for conducting business of photography and sale of ayurvedic medicines respectively was genuine. Thus, for the reason that DW-2 Yogendra wanted to carry on business of photography and DW 1-Komlata had rented out the premises from one Jadhav to carry on the business of selling herbal medicines showed the bonafide requirement of the respondent/plaintiff was accepted by the appellate Court. As regards the contention of the applicant that one of the sons of the

respondent-landlord was conducting business in the name of “ Day's Photo Studio and Mobile Shopee” which is situated in the suit premises it was observed that DW-2 Yogendra son of the respondent was in his independent business. The learned appellate Judge held that the requirement of the suit premises for his family members was a bonafide necessity and requirement.

8. Further, on the findings on comparative hardship as recorded by the learned trial Judge, the findings were confirmed by the learned appellate Judge observing that DW-1 Prabhakar during his cross-examination has clearly admitted that he has not undertaken efforts to search for alternate premises after receipt of the notice. Accordingly, the learned appellate Judge dismissed the appeal of the applicant-defendant.

9. Learned counsel for the applicant in assailing the findings of both the Courts on the ground of bonafide requirement has made two-fold submissions. It is firstly submitted that the Courts below have overlooked that the business of one of the brother when he was conducting business in a photograph shop titled as “Day's

Photo Studio and Mobile Shoppee” was ancilliary to the business of DW-2 Yogendra and thus, there was no real requirement for Yogendra of another premises and on this count, the need of the respondent cannot be said to be genuine or bonafide. It is next submitted that the element of hardship was not appropriately considered. The Courts below have over overlooked that the hardship was greater to the applicant in as much as the entire livelihood was dependent on the laundry business being undertaken in the said premises would be taken away if the decree was to be sustained. In support of this contention, learned counsel for the applicant has placed reliance on the decision of the Supreme Court in *Badrinarayan Chunilal Bhutada vs Govindram Ramgopal Mundada* AIR 2003 SUPREME COURT 2713.

10. On the other hand, learned counsel for the respondent-landlord in supporting the concurrent findings as recorded by both the Courts in favour of the respondent submitted that none of the contentions as urged on behalf of the applicant can be accepted. It is submitted that the bonafide requirement of the applicant for the suit

premises has been well established and is held to be genuine on the basis of the evidence which had come on record. It is submitted that as regards comparative hardship it was rightly held by both the Courts, that the comparative hardship was greater to the respondent in as much as DW-1 Yogendra and DW-2 Komalata for want of premises were carrying on their respective business remaining outside or in rented premises. It is submitted that it was not open to the applicant to dictate to the respondent-landlord as to how the respondent uses his own premises. In supporting his arguments, learned counsel for the respondent has placed reliance on the evictioin of the Supreme Court in Badrinarayan Chunilal Bhutada vs Govindram Ramgopal Mundada AIR 2003 SUPREME COURT 2713.

11. I have heard learned counsel for the parties. With the assistance of learned counsel for the parties, I have gone through the judgments of both the Courts.

12. There is no dispute between the relationship between the respondent and the applicant as that of a landlord and tenant. In approaching the trial Court in the suit in question, in para 5 of the

plaint, the respondent-landlord had raised a specific ground in regard to the bonafide requirement of the suit premises wherein the respondent stated that the respondent had 10 members in his family. It was stated that said PW 2-Yogendra and daughter Komalata PW 1 wanted the premises for undertaking their business. Son Yogendra was undertaking the business of outdoor photography and the plaintiff's daughter Komalata was undertaking the business of selling herbal medicines from a rented premise and thus, there was a grave necessity for the respondent to have the premises. In para 7 of the plaint, the respondent has also pointed out that his son had independent residential premises and that the shop premises where he was conducting the business in the name and style of Day's' Photo Studio and Mobile Shoppee" was an independent business having no connection with outdoor photography business of his son Yogendra as also the business of the daughter Komalata who was undertaking her business from rented premises. A perusal of the written statement of the applicant and in reply to the said averments in the plaint is absolutely vague. It merely proceeds on denial. The only

contention which has been urged on behalf of the applicant in dealing with para 5 of the plaint is that the applicant was in occupation of the suit premises since last 48 years and was conducting a laundry business and it was the only source of livelihood and if a decree is to be passed against the applicant, it will deprive the applicant of his livelihood.

13. A perusal of the findings as arrived by the learned trial Judge clearly demonstrates that the need of the respondent is bonafide in as much as the applicant could not displace the case of the respondent that the premises were bonafide required for the use of the applicant for the respondent's son Yogendra or his daughter Komalata.

14. Also on the issue of comparative hardship, there are concurrent findings of fact which are recorded on evidence that the applicant had failed to discharge his obligation to secure any alternate premises There is also a clear admission in that regard of the applicant-defendant apart from clear evidence on record. The only contention which is urged on behalf of the applicant in assailing

the concurrent findings that the Courts ought to have considered that the need of the son Yogendra as set out in para 5 of the Plaint ought to have been considered by the applicant as ancillary to the business to another brother Devendra. However, it has come on record that Devendra is having an independent business. It has also come on record that PW 2-Yogendra was undertaking the business of outdoor photography and that Yogendra also had independently desired to undertake the business of photography by having his independent premises. Further, apart from the need of son PW 2 Yogendra the other need was for the daughter Komalata which also stood proved in evidence that she had obtained a premise on leave and licence basis behind the suit premises from where she was undertaking the business of selling herbal medicines. If this was to be the clear position in evidence then unless, there is a glaring perversity in the observations as made by the Courts below, these findings cannot be displaced and interfered with. On the ground of comparative hardship also, the applicant stepped into the witness box and admitted that no efforts were taken to search for premises after

receipt of the suit notice. It has also come on record that the applicant was earning sufficient income and thus the cumulative effect of the entire evidence is that he could certainly afford to have alternate premises. Thus, issues on the bonafide requirement and comparative hardship have also been appropriately decided by both the Courts in favour of the respondent on the basis of evidence which has come on record. There cannot be any dispute on the proposition of law as laid down in the decision as relied on behalf of the applicant in the decision in the case of Badrinarayan Chunilal Bhutada (supra.) However, the present case where it was not a mere desire of the respondent-landlord to have the suit premises but, on the clear evidence which had come on record, the respondent had proved that not only the requirement for the suit premises but it was bonafide and genuine, as also element of necessity was greater for want of the suit premises for the members of his family. Thus, the observations as made by the Supreme Court in para 8 of the above decision would not apply to the facts of the present case. Learned counsel for the respondent would be correct in his submissions that

the applicant-tenant cannot dictate to the respondent-landlord as to what should be his needs. The law in that regard is well-settled.

15. In the above circumstances, I am of the clear opinion that the concurrent findings of both the Courts require no interference. There is no perversity whatsoever to the findings as recorded by both the Courts or any material irregularity. The Civil Revision Application is devoid of merits and it is accordingly rejected. No costs.

16. The applicant to hand over possession of the premises to the respondent-landlord within a period of six weeks from today.

17. At this stage, learned counsel for the applicant submits that the applicant is ready and willing to vacate the suit premises within a period of eight months from today and to that effect the applicant is ready and willing to place on record an undertaking within four weeks from today. Learned counsel for the respondent on instructions is agreeable to the said suggestion of the applicant. Accordingly, the respondent shall not execute the decree for a period of eight months from today on the applicant filing an undertaking in

this Court on or before 9th March 2018 which shall be in the usual terms and incorporating that the applicant or any person claiming through the applicant shall unconditionally hand over the possession of the suit premises to the respondent-landlord within a period of eight months from today as also that in the meantime, the applicant shall not create any third party rights or part with possession of the suit premises.

18. Subject to the above undertaking, being furnished by the applicant, Revision application is disposed of in above terms.

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19. Mr.Kamble learned counsel for the applicant would submit that in view of the above judgment in the companion Revision Application, there is no need for a separate judgement and contentions of the applicant in this revision application would stand concluded by the said judgment. He submits that his client is also willing to unconditionally vacate the suit premises within a period of

eight months from today and on the same terms and conditions as being accepted in the companion Revision Application No.633 of 2017.

20. Civil Revision Application is accordingly disposed of on same terms and conditions as in Civil Revision Application no.633 of 2017. No costs.

(G.S.Kulkarni, J)