

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 226 OF 2018

Shyamrao Dnyandeo Alias Dnyanu
Naikwadi .. Applicant
vs.
Shri Nikhiddi V. Gupta .. Respondent

Mr. Sandesh Deshpande for the Applicant.
Ms Anusha P. Amin for the Respondent.

CORAM : M. S. SONAK, J.
DATE : 4 DECEMBER 2018.

P.C. :-

1] Heard Mr. Sandesh Deshpande for the petitioner and Ms. Anusha P. Amin for the respondent.

2] The challenge in this petition is to the judgments and decrees dated 23rd August 2018 and 20th July 2016 made by the Trial Court and the Appeal Court ordering the eviction of the applicant on the ground of default in payment of rent and *bona fide* requirement of the respondent – landlord.

3] Mr. Deshpande, the learned counsel for the petitioner, submits that the petitioner during pendency of the proceedings before the Trial Court did deposit the rents which were alleged to be in default. He submits that in fact the notice of demand was itself defective,

inasmuch as rents over and above what were actually due had been demanded. Accordingly, he submits that no eviction could have been ordered on the ground of default in payment of rents.

4] He submits that the Trial Court as well as the Appeal Court has really not gone into the issue of comparative hardship and even the findings as regards the *bona fide* requirements of the respondent-landlord are not borne by the evidence on record and consequently, suffers from perversity. Mr. Deshpande therefore, submits that the impugned judgments and decrees warrant interference.

5] Ms Anusha Amin, the learned counsel for the respondent, defends the impugned judgments and decrees on the basis of reasoning set out therein. She points out that there are concurrent findings of fact which may not be interfered with in the exercise of extraordinary jurisdiction under Article 226/227 of the Constitution of India.

6] Insofar as the ground of default in payment of rents is concerned, the record bears out that necessary notice was received to the petitioner before the institution of suit seeking eviction on the

ground of default. There is no material on record to indicate that the notice was defective or that the same was not served. In any case, the demand of rent over and above contractual rent, does not render the notice defective as has been held by the Division Bench of this Court in *Chaganlal Mulchand Jain vs. Narayan Jagannath Bangh* – 1983 Mh.L.J.254.

7] The record also indicates that the petitioner did deposit certain amounts in the proceedings before the Trial Court within 90 days from the service of the suit summons. However, though, agreed rent was Rs.178/- per month and the arrears has to be deposited on such basis, the petitioner, chose to deposit the arrears at the rate of only Rs.120/- per month. Besides, neither the costs nor the interest amount was deposited by the petitioner. The record also indicates that thereafter the petitioner failed to pay/deposit the rents regularly during pendency of the suit. Upon cumulative consideration of all such facts, the two Courts have recorded concurrent findings on the aspect of default. There is really no error or perversity in the concurrent findings of fact recorded by the two Courts so as to warrant any interference.

8] Insofar as the second ground of *bona fide* requirement is concerned, again, the evidence on record which has been appreciated by both the Trial Court as well as the Appeal Court indicates that the respondent -landlord required the suit premises for the *bona fide* needs of himself and his family members. The family comprises landlord's wife, two married sons and their wives and grand children. The record also bears out that the landlord was occupying the premises ad-measuring only 400 sq. ft on the ground floor of Vaibhav Niwas and was carrying on business in front half portion of such premises and living alongwith his family members in the back half portion. The Trial Court has considered the issue of comparative hardship. The findings of fact concurrently recorded by the two Courts on the ground of *bona fide* needs of the landlord and the issue of comparative hardships cannot be said to be vitiated by any perversity so as to warrant interference.

9] For the aforesaid reasons, this petition is liable to be dismissed and is hereby dismissed. The interim order, if any, is hereby vacated. There shall be no order as to costs.

10] At the request of learned counsel for the petitioner, execution of the eviction decree is however stayed for a period of six weeks from today, which shall be subject to the petitioner filing an usual undertaking in this Court within a period of two weeks from today after furnishing advance copy of the same to the learned counsel appearing for the respondent. If no such undertaking is filed within two weeks, then, this limited stay to stand vacated without further reference to this Court.

(M. S. SONAK, J.)