

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL REVISION APPLICATION NO.646 OF 2016**

Rajendra Nathuram Gaikwad] Applicant

Vs.

Ashok Rambhau Thakre & Anr.] Respondents

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Mr. Vijay S. Gharat, for Petitioner.

Mr. Rajiv Patil, Sr. Advocate i/b Prashant D. Patil, for respondent No.2.

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CORAM : R.G. KETKAR, J.

DATE : 6TH JUNE, 2018.

P.C.

Heard Mr. Gharat, learned Counsel for the petitioner and Mr. Patil, learned Sr. Counsel for respondent No.2 at length.

2. By this Civil Revision Application under section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C'), the applicant, hereinafter referred to as “defendant” has challenged the judgment and decree dated 17th August, 2016 passed by learned Ad-hoc District Judge-2, Nashik in Civil Appeal No.226 of 2013. By that order, the learned District Judge allowed the appeal preferred by respondents No.1 and 2 herein and quashed and set aside the judgment and decree dated 30th August, 2013 passed by the learned 2nd Joint Civil Judge, Junior Division, Nashik Road in Regular Civil Suit No.156 of 2010. The learned District Judge decreed the suit instituted by respondents No.1 and 2, hereinafter referred to as “plaintiffs” and directed the defendant to hand over

vacant possession of Shop admeasuring 10'x36' square feet in House No.579 situate within the local limits of Deolali Cantonment Board, Deolali, (for short 'suit premises') within two months from the date of the order. The learned District Judge also issued other directions.

3. In support of this application, Mr. Gharat strenuously contended that the learned District Judge was not justified in passing eviction decree. The learned trial Judge by a well reasoned order dismissed the suit by holding that the plaintiffs have not established grounds under sections 15 and 16 (1) (g) of the Maharashtra Rent Control Act, 1999 (for short 'Act'). He submitted that need pleaded by the plaintiffs is neither reasonable nor bona fide. The plaintiffs alleged that son of plaintiff No.2 is serving as waiter in a Hotel and they need the suit premises for running hotel. He submitted that burden to establish reasonable and bona fide requirement was on the plaintiffs and they failed to establish the ground. The learned District Judge, however, decreed the suit only under Section 16 (1) (g) of the Act and declined to pass decree under Section 15. He has taken me through paragraphs 15 to 24 of District Court's judgment. He submitted that in so far as question of hardship is concerned, the learned District Judge committed error in placing burden upon the defendant. He, therefore, submitted that application requires consideration.

4. On the other hand, Mr. Patil, supported the impugned order. He relied on the decision of this Court in the case of **Shubhada Shashikant Kuvalekar (since deceased) 1A. Niket Shashikant Kuvalekar & Ors Vs. Indirabai Balbhim Kulkarni (since deceased) 1A. Manohar Balbhim Kulkarni & Ors, in Writ Petition No.8167 of 2004** and in particular paragraphs 13 and 14 to contend that when the plaintiff comes with the case of reasonable and bona fide requirement, the Court has to proceed on the

presumption that need pleaded by the plaintiff is reasonable and bona fide and it is for the defendant to bring on record material to show that need pleaded by the plaintiff is neither reasonable nor bona fide. He submitted that learned trial Judge committed serious errors in dismissing the suit. As against this, the learned District Judge after considering the evidence on record has held that need pleaded by the plaintiffs is both reasonable and bona fide and no hardship will be caused to the defendant in the event of passing of eviction decree. He, therefore, submitted that no case is made out for interfering with the impugned order.

5. I have considered rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. The plaintiffs have instituted suit for eviction under sections 15 and 16 (1) (g) of the Act. The learned trial Judge dismissed the suit. The learned District Judge has decreed the suit only under section 16 (1) (g). The learned District Judge has considered the question of reasonable and bona fide requirement in paragraphs 15 to 21. The learned District Judge noted that the plaintiffs came with case that son of plaintiff No.2 is doing work of waiter. He has got ample knowledge of the said business and he is intending to run hotel business in the suit premises. To establish this fact, the plaintiffs examined plaintiff No.1 as also P.W. 2 Amol Thakre who is working as waiter who desires to start hotel in the suit premises. The plaintiffs also examined employer of P.W.2 Amol Thakre as P.W.3. The learned District Judge noted that defendant himself admitted that son of plaintiff No.2 is working as waiter in hotel of others. The learned District Judge has dealt with findings recorded by the learned trial Judge in paragraphs 18 and 19 and held that reasonings given by the learned trial Judge are not justifiable.

6. Mr. Gharat submitted that in paragraph 20, the learned District Judge noted that the plaintiffs possess more properties in the said locality and despite that decree is passed. The said aspect is considered by the learned District Judge and it is observed that the plaintiffs have three brothers namely, Ambadas, Satish and Subhash and they are doing their own business. An opportunity should be given to P.W.2 Amol to run his independent business. I do not find that the learned District Judge committed any error in holding that the plaintiffs have established that they require the suit premises reasonably and bona fide.

7. In paragraphs 22 to 24, the learned District Judge has considered question of hardship and observed that the defendant did not prove that any search was taken by him for finding out another premises in that area or locality. He did not adduce evidence to show that he made search of another shop for running his business.

8. For the reasons recorded in paragraphs 15 to 24 by the learned District Judge, I do not find that the learned District Judge has committed any error in passing the eviction decree. The defendant is not in a position to demonstrate that the findings recorded by the District Court are perverse being based on no evidence or that on the basis of material on record, no reasonable or prudent person would have come to the conclusion arrived by the District Court. Merely because on the basis of the material on record, another view is possible that, by itself, is no ground for exercising the powers under section 115 of the C.P.C. In the result, the Civil Revision Application fails and the same is dismissed.

[R.G. KETKAR, J.]