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

CIVIL REVISION APPLICATION NO.27 OF 2018

Lata Shridhar Upadhyay & Anr.

..Applicants/
Org.Defendants

Vs.

Sudhakar Korgaonkar & Ors.

..Respondents

Mr.Kunal Bhanage for Applicants.

Mrs.Zenobia Irani-Nair and Mr.P.Tikare for Respondents.

CORAM : G.S.Kulkarni, J.

Reserved on : 21st February, 2018

Pronounced on : 2nd April, 2018

JUDGMENT:

In this civil revision application, the applicants, who are the heirs and legal representatives of the original defendants/tenants, challenge the order dated 30 October 2017 passed by the appellate bench of the Small Causes Court, Bombay, dismissing the applicants' appeal whereby the judgment and a decree of eviction passed against the applicant by the learned trial Judge dated 26 April 2012 in R.A.E. & R. Suit No.468/842 of 2002 stands confirmed.

2. The suit premises is a shed known as Vishram Wadi, Sion Road, near King Circle Station, Mumbai, constructed by the original landlord Mr.Mangaldas V. Narsi, who had executed a Will dated 18 June 1985 which was duly probated. As per the Probate and a Deed of Transfer consequent thereto, the respondents/ plaintiffs had become owners and landlords of the suit property. For convenience, the parties are referred to as they stand before the trial Court namely the 'applicants' who pursue the defendants' interest, are referred as the 'defendants' and the 'respondent/landlord' as the 'plaintiff'.

3. One Mr.Shyam U. Upadhya was a monthly tenant of the suit premises paying monthly rent of Rs.185/- and was carrying on the business of manufacturing betel nuts (suparis). It is not in dispute that after the death of Shayam Upadhya, the tenancy rights devolved upon the defendants being the legal heirs. The case of the plaintiff in the plaint was that the defendants had kept the suit premises locked and no business activities were carried on since the death of Shyam Upadhya. The suit premises

were not used for the purpose for which they were let. In July 2001, due to lack of usage and maintenance, roof of the suit premises had collapsed and the structure of the premises was practically raised to ground. The plaintiff had suffered a paralytic attack and was not in a position to work. Consequently, the wife of the plaintiff was compelled to look after the business. The plaintiff has two sons, one son is seeking education in Engineering and the other is still schooling. The entire burden of the family expenses is being met from the small business as also there are medical expenses. The plaintiff has set up a small business of pest control in his premises. The plaintiff therefore, required the suit premises to store the materials, instruments, equipments and pesticides. The present premises of the plaintiff are inadequate and not sufficient to store the instruments, equipments and all materials required in the pesticides business. The plaintiff had no other premises where he could undertake this business and thus, was in bonafide requirement of the suit premises for himself as also for his family which consists of his wife and two sons. The plaintiff accordingly requested the defendants who according to the plaintiff were affluent persons engaged in various types of

businesses and their turnover is in lakhs of rupees and who according to the plaintiff had tremendous financial capacity, to vacate the premises and acquire premises in other areas. The plaintiff stated that the defendants were owners of the building where they were residing. It was stated that the defendants also had alternative accommodation and apart from that, the defendants had full capacity of acquiring alternate accommodation and hence no hardship will be caused to the defendants in the event of an eviction decree. This was the case of the plaintiff as set out in the plaint.

4. Defendant No.1 in contesting the suit filed a written statement, as also separate written statements were filed by the defendant Nos.3 and 4. Defendant No.1 inter-alia contended that the plaintiff was suffering from paralysis and was unable to carry on business and hence the suit premises were not required, for bonafide use and occupation of the plaintiff. Defendant Nos.3 and 4 contended that the roof of the suit premises was badly damaged and therefore, it was difficult to carry on business in the suit premises. Defendant Nos.3 and 4 stated that on many occasions

they had requested the plaintiff to repair the suit premises, however the plaintiff did not take any steps to repair the roof. Defendant Nos.3 and 4 stated that they had also approached the Municipal Corporation to carry on essential repairs, however it was not of any avail.

5. The learned trial Judge framed the following issues and recorded his findings which are as under:-

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| “1. | <i>Whether need of the plaintiff in respect of suit premises is reasonable and bonafide ?</i> | Yes. |
| 2. | <i>To whom grater hardship will be caused by passing he decree than refusing to pass it?</i> | To the Plaintiff. |
| 3. | <i>Whether plaintiff is entitled to recover possession of the suit premises?</i> | Yes. |
| 4. | <i>What order and decree?</i> | Suit is decreed. |

Additional Issues:-

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| 2(a) | <i>Do the defendants No.3A, 3B and 4 prove that unless and until the proper legal representations are obtained in respect of will of deceased Mangaldas V. Narsi, the plaintiff cannot claim or represent to be landlord or owner of the suit property?</i> | No. |
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- 2(b) *Do the defendants No.3A, 3B and 4 prove that the suit is barred by principles of Res-judicata as the earlier suit filed by original landlord Mangaldas V. Narsi against defendants No.1 and 2 i.e. Suit No.180/696 of 1982 is dismissed by the Court?* No.
- 2(c) *Does the plaintiff prove that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit?* Yes.”

6. The Judgment of the learned trial Judge holds that the suit premises were reasonably and bonafide required by the plaintiff. It was held that greater hardship would be caused to the plaintiff and that no hardship would be caused to the defendants, if the defendants suffer an eviction decree. As regards the issue that the suit premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months, immediately preceding the date of the suit, the learned trial Judge appreciating the evidence on record, reached to a conclusion that the plaintiff had clearly proved that the

defendants were not using the suit premises for a period of six months preceding the date of the suit. Accordingly, the learned trial Judge considering the documentary and oral evidence, on 26th April 2012 decreed the suit directing the defendants to deliver possession of the suit premises in whatever condition, to the plaintiff within one month from the date of the judgment.

7. The defendants being aggrieved by the said eviction decree filed the appeal in question (Appeal No.41 of 2012). The appellate bench of the Small Causes Court by the impugned judgment and order considering the documentary and oral evidence has confirmed the findings of the learned trial Judge and dismissed the appeal of the defendants.

8. Learned Counsel for the applicants/defendants in assailing the findings of both the Courts below, submits that the suit premises itself was not in existence at the time of filing of the suit and thus, the ground of non-user of the suit premises for a period of six months prior to institution of the suit could not have

been urged by the plaintiff. It is submitted that the case of the bonafide requirement of the plaintiff could not have been accepted by both the Courts below. Learned Counsel for the applicants/defendants in supporting his case has placed reliance on the decision of the Single Judge of this Court in case of **Gopal Dattaraya Chapahlkar v. Shri Govind Yeshwant Borkar & Ors.**¹ to contend that the plaintiff can not take advantage of his own wrong having not maintained the suit premises and the suit premises having rendered of no utility, would not entitle the plaintiff for a decree of eviction.

9. I am not persuaded to accept the submissions as made on behalf of the applicants/defendants. This for the reason that there was clear evidence on record in regard to the bonafide requirement of the plaintiff. The plaintiff in his evidence stated that he wanted to expand his business of pest control by doing dealership of chemicals required for “pest control” and not the “rent collection agency business”. There was clear evidence and moreover it was not disputed by the applicants that the plaintiff's

¹ Vol. 99(3) Bom. L.R. 52

physical condition was not well to carry on the business effectively and that his son who was studying Engineering at the relevant time would also join the family business. It had also come in evidence that there was a bonafide requirement of the suit premises as the office and the storage of pesticides was being undertaken by the plaintiff in one room and that it was very inconvenient to the plaintiff to store the pesticides which clearly demonstrated the requirement of the suit premises. Apart from that, the need for business and family members was clearly averred in paragraph 5 of the plaint. Thus, there was a bonafide requirement of the plaintiff to have the suit premises for the plaintiff himself and/or his family and for carrying out the business of pesticides which was in addition to the existing business of collecting rent which was insufficient to meet the needs of the family. The defendants who were not using the suit premises, cannot dictate the plaintiff as to what business the plaintiff should be doing in the suit premises.

10. On the other hand, as regards the applicants, it has clearly come in evidence that the applicants/defendants no more

required the suit premises in as much as they were not using the suit premises for six months prior to the institution of the suit. The defendants have alternate and sufficient premises as discussed in detail in judgment of the trial Court as also in the judgment of the appellate Court. It needs to be noted that DW-1 Lata Upadhya admitted that she owned Guruprasad Building where she was carrying on business of fast food namely the 'Tikha Thanda shop'. DW-1 however, suppressed material facts by not producing balance-sheet of Upadhya & Company as also the income from the Tikha Thanda shop, as also the details of the tenants who were occupying the Guruprasad Building. There is clear evidence on record that if the roof and three walls of the suit premises had collapsed and that the same was not being used by defendants, the contention of the defendants that they had made repeated requests to the plaintiff to carry out repairs and even that the Municipal Corporation had not permitted the defendants to carry out repairs cannot be accepted in as much as the only material to support his contention is a solitary letter dated 11 May 2002 (Exhibit 40) of the defendant which is a letter written after filing of the suit. Thus, this was clearly an after thought as rightly observed by the

learned trial Judge. If the defendant was serious to use the premises as also to get the same repaired then there were several remedies available to them not only under the Rent Act but even otherwise to assert the plea for repairs and eventually occupy the suit premises. Thus all the pleas of the defendant on this count were thoroughly hollow. It is also not in dispute that the suit premises collapsed in July 2001. Further the applicants/defendants do not stop at this but were also denying the title of the plaintiff however without any basis. Thus, the contention of the defendants that they were unable to use the premises on account of the fault of the plaintiff in not maintaining the premises stands clearly falsified when tested on evidence.

11. The decision in **Gopal Dattaraya Chapahlkar v. Shri Govind Yeshwant Borkar & Ors.** (supra) would not assist the applicants in as much as the suit in the said case was for the arrears of rent and the tenant having acquired alternate accommodation, and not on the ground of bonafide requirement. The present case is not only a case of non-user of the premises but also of a bonafide requirement which is proved as also the

comparative hardship of the plaintiff also being proved by the plaintiff.

12. To conclude it may be observed that there was clear evidence on record to show that for 6 months prior to the institution of the suit, the defendants were not using the suit premises for the purpose for which the premises were let out as according to the defendants, the suit premises had collapsed in July 2001 and that the plaintiff had not taken any steps to repair the premises. All this clearly goes to show that the applicants/defendants did not require the suit premises. It also appears from the evidence that the applicants/defendants in view of sufficient means did not require the suit premises for the business activities. A perusal of the record clearly indicates that there was clear and plentiful evidence before the trial Court of the plaintiff proving bonafide requirement for the suit premises to undertake the business of pesticides as also the suit premises were required for growing needs of the family.

13. The plaintiff/landlord did not have any other alternate suit premises. He was undertaking a business of rent collection which was not sufficient to meet the financial needs of the family and therefore, he was undertaking the additional business of pesticides/pest control for which he was storing the pesticides in his small office. The defendants were not in a position to bring any material on record to show that the plaintiff had any alternative premises other than the suit premises where the plaintiff can undertake the business of pesticides/pest control with his family members more particularly when one of the sons was undertaking education in engineering at the relevant time and would also require the suit premises. It also cannot be overlooked that the plaintiff is a paralytic person and accordingly is handicapped. Due to this ill-health, it would not only be the need of the plaintiff alone for the suit premises but also of the family members.

14. I find that both the Courts below have carefully examined the evidence on record to reach a finding that the plaintiff has proved the grounds of eviction as discussed above.

The Courts below have appropriately exercised jurisdiction vested with them. There is no perversity or any jurisdictional error in passing the impugned orders. Revision application lacks merits. It is, accordingly, rejected. No costs.

15. Considering the nature of the suit premises, the respondents/ plaintiffs shall be entitled to have the possession of the suit premises within four weeks from today.

[G.S. KULKARNI, J.]