

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Civil Revision Application No.57/2018

Ruprao s/oTukaram Ujjainkar
Vs.
Bhalchandra s/o Namdeo Pawar

*Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.*

Court's or Judge's Orders

Shri R.G.Kavimandan, Advocate for applicant.
Shri Abhay Sambre, Advocate for non applicant.

CORAM : A.S.CHANDURKAR, J.
DATED : 18.09.2018

The applicant is the original defendant against whom a decree for eviction under the provisions of Section 16 (1) (g) of the Maharashtra Rent Control Act, 1999 (hereinafter referred to as “the Said Act”, for short) has been passed.

It is the case of the non applicant-plaintiff that he is the owner of the block admeasuring 15 feet X 10 feet that was let out to the applicant herein on rent of Rs.400/- per month. The plaintiff's son became a medical practitioner and hence, he had needed the said block for starting his own hospital. Accordingly, by issuing notice on 12.12.2002, the plaintiff sought possession of the suit premises on the ground of bona fide need as well as on the ground that the tenant was in arrears of rent. According to the defendant, he was regular in payment of rent and that there were no arrears. It was denied that the plaintiff had bona fide need of the suit premises as he

owned various other properties. The trial Court held that, as valid notice under Section 15 of the said Act was not issued, no relief could be granted to the plaintiff on the ground of arrears of rent. It further held that bona fide need of the plaintiff was not proved as he had various other properties where the hospital could be started. The suit was, therefore, dismissed.

The appellate Court reversed the findings recorded by the trial Court and held that the bona fide need of the plaintiff had been proved. It, therefore, allowed the appeal and decreed the suit. Being aggrieved, the defendant has filed the present Civil Revision Application.

Shri R.G.Kavimandan, learned counsel for the applicant submitted that in view of the fact that the plaintiff was owning various other properties and the fact that the suit property was admeasuring only 15 feet x 10 feet, the appellate Court erred in holding that the bona fide need had been proved. It was submitted that in the year 2008, the plaintiff's son started a hospital at Plot No.18 and therefore, the need as pleaded was satisfied. For the said purpose, Civil Application (C) No.26/2018 with a prayer for amendment of the written statement was moved. Similarly, Civil Application(C) No.27/2018 seeking permission to place on record additional documents was also filed. Placing reliance on the decision in *Vijay Gangadhar Dande (dead) through Legal Representatives and others Versus Dilip Gyanchand Khemani*, reported in 2015(6) Mh.L.J.519, it was urged that bona fide need of the plaintiff had not been made out.

Learned counsel for the applicant has also placed reliance upon the judgment in *R.E.Fanibunda Versus Nicholas of India Ltd. and others*, reported in 2003(3) All.M.R.967 and *Jitendra Vasantrao Nagarkar Versus Mohanlal Maluramji Agrawal*, reported in 2016(6)Mh.L.J.797, in support of his contentions.

Shri Abhay Sambre, learned counsel for non applicant supported the impugned judgment. According to him, the appellate Court rightly found that it was not for the Court to dictate terms to the landlord as regards choice of the premises. It was submitted that presently upper floor of the building in question was vacant. The adjoining premises were occupied by the defendant's brother on lease and the proceedings for his eviction were also in progress. In respect of the prayer for amending the written statement, it was submitted that the acquisition in the year 2008 was sought to be now brought on record and considering the delay and laches, the amendment did not deserve to be allowed. Similarly, the documents, as sought to be filed, were not relevant. No interference was therefore called for.

I have heard learned counsel for the parties at length and I have perused the impugned judgment. It has been found that though the plaintiff had owned other premises, present premises in which the defendant was the tenant was found more suitable for starting the hospital. Except the ground floor portion, the possession of rest of the building had been obtained by the plaintiff. As held in various decisions of the Hon'ble Supreme Court, the landlord is the best judge of his need and it is for him to

decide the manner in which the premises are to be put to use. It is to be noted that in reply filed to the Civil Revision Application, it has been asserted in para 4 that the defendant is not using the suit premises for more than eight years and that there was no electricity connection therein. These assertions have not been denied by the present applicant. In the light of the aforesaid factual aspects, the ratio of the decisions relied upon by the learned counsel for the applicant do not support his contention. Thus, the finding recorded by the appellate Court that the bona fide need of the plaintiff had been made out does not call for interference.

In view of the aforesaid, I do not find that the appellate Court committed any jurisdictional error in decreeing the suit and directing possession of the suit premises to be handed over to the plaintiff. The Civil Revision Application stands dismissed with no orders as to costs.

Interim relief granted by this Court on 11th April, 2018, shall continue to operate for a period of four weeks and shall cease to operate automatically thereafter.

JUDGE