

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL REVISION APPLICATION NO. 26 OF 2017
CONVERTED FROM SECOND APPEAL NO. 658 OF 2018**

Suganchand S/o. Mishrilal Lodha,
Age : 76 years, Occu. Nil,
R/o. Pahur, Tal. Jamner,
District Jalgaon.

.... Applicant
(Orig. Plaintiff)

Versus

Shri. Deepak Balwantlal Tamakuwala,
(Suratwala), Age : 61 years,
Occu. Business, R/o. C.S.No. 2118/3
Jalgaon Janta Sahakari Bank Ltd.,
Mukhyalay, Navipeth, Jalgaon,
Tal. & Dist. Jalgaon.

... Respondent
(Orig. Defendant)

....

Shri. S. S. Thombre, Advocate for the applicant
Mr. P. P. Dhorde, Advocate for the respondent

.....

**AND
CIVIL APPLICATION NO. 13002 OF 2016
IN
CIVIL REVISION APPLICATION NO. 26 OF 2017**

Suganchand S/o. Mishrilal Lodha,
Age : 80 years, Occu. Nil,
R/o. Pahur, Tal. Jamner,
District Jalgaon.

.... Applicant
(Orig. Plaintiff)

Versus

Shri. Deepak Balwantlal Tamakuwala,
(Suratwala), Age : 61 years,
Occu. Business, R/o. C.S.No. 2118/3
Jalgaon Janta Sahakari Bank Ltd.,
Mukhyalay, Navipeth, Jalgaon,
Tal. & Dist. Jalgaon.

... Respondent
(Orig. Defendant)

....
Shri. S. S. Thombre, Advocate for the applicant
Mr. P. P. Dhorde, Advocate for the respondent
.....

CORAM : P. R. BORA, J.

DATED : 29th JULY, 2019

ORAL JUDGMENT : -

1. The landlord has preferred the present Revision Application against the judgment and order passed by the learned Ad-hoc District Judge-2, Jalgoan in Reg. Civil Appeal No. 1079 of 2012. The applicant and the respondent are hereinafter referred to as the plaintiff and defendant i.e. as per their status in the suit.

2. Reg. Civil Suit No. 48 of 2006 was filed by the plaintiff seeking possession of the property in occupation of the defendant as a tenant in the said property on the ground of *bona fide* requirement. It appears that, since it was mentioned in the very first paragraph of the suit plaint that the defendant has not paid the rent and he was in arrears of rent, 'default in payment of rent' was also treated to be a ground raised for claiming decree of eviction. From the other averments in the plaint and the prayer clause, it is, however, quite evident that the possession was sought not on the ground of default in payment of rent but on the sole ground of the *bona fide* requirement.

3. The defendant resisted the said suit by filing his written statement. It was his contention that, the need as was canvassed in the plaint was not *bona fide* and the plaintiff was not at all in need of the suit premises. It was also his contention that, the plaintiff is having only one surviving son and he is having a settled business at Pahur and as such, the premises at Jalgaon was not required to him. It was also his contention that, greater hardship was likely to be caused to him than the plaintiff in case the decree of eviction is passed against him.

4. The ld. trial Court after having considered the evidence which was adduced before it, allowed the said suit and passed the decree of eviction and directed the defendant to hand over the possession of the suit premises within one month from the date of his order. The order passed by the trial Court was challenged by the tenant by filing Reg. Civil Appeal before the first appellate Court, and the first appellate Court has allowed the said appeal and has reversed the decree passed by the trial Court. Aggrieved by, the landlord has preferred the present Civil Revision Application.

5. Shri. S. S. Thombre, learned counsel for the revision applicant submitted that, the ld. District Judge has failed in

appreciating the evidence on record and merely on some vague observations and the stray references made in the judgment passed by the ld. trial Court, has reached to the conclusion that the trial Court has considered the entire case as if it was filed under the provisions of the Bombay Rent Act, when the Bombay Rent Act had already stood repealed and the Maharashtra Rent Act had come into force. The ld. Counsel submitted that, the evidence produced on record by the plaintiff leaves no doubt that the suit premises are *bona fide* required for the business of the son of the plaintiff. The ld. Counsel submitted that, it was the case of the plaintiff before the trial Court that, since the defendant is having alternate premises available for its business at Jalgaon, no greater hardship was likely to be caused in the event eviction decree is passed against him. The ld. Counsel taking me through the notes of evidence submitted that, the defendant has admitted the fact that the premises were required to the plaintiff for business of his son. It is further pointed out that, the defendant has also accepted that the plaintiff does not have premises of his ownership at Jalgaon other than the suit premises. The ld. Counsel further submitted that, in cross-examination the defendant has also admitted that he is having certain other premises of his ownership at Jalgaon. The learned counsel submitted that, having regard to the clinching evidence which was brought on record before the trial

Court, the trial Court has rightly passed the decree of eviction which has been upset by the first appellate court on erroneous grounds. The ld. counsel in the circumstances prayed for setting aside the order passed by the first appellate Court and to confirm the order passed by the trial Court.

6. Shri. P. P. Dhorde, learned Counsel appearing for the respondents supported the impugned judgment. The ld. Counsel relying upon the judgment of this Court in the case of **Balasaheb Anantrao Bahirat vs. Rohidas Bapusaheb Tupe** reported in 2007(3) Mh.L.J. 467, submitted that the eviction suit filed by the plaintiff under the provisions of Bombay Rent Act, was liable to be dismissed on the said sole ground for the reason that on the date of filing of the suit the said Act had stood repealed. The ld. Counsel submitted that, first appellate Court has rightly reversed the decree passed by the trial Court on the said ground and, therefore, no interference is required in the order passed by the first appellate Court. The ld. counsel further submitted that, in view of the finding recorded by the first appellate Court which is a finding of fact, unless it is noticed to be perverse this Court may have little scope while exercising the revisional jurisdiction to cause interference in the said judgment. The ld. counsel relied upon the judgment of the Hon'ble Apex Court in the case of **Gandhe**.

Vijay Kumar Versus Mulji Alias Mulchand reported in (2018) 2 SCC 576, to buttress his said contention. The ld. counsel taking me through the discussion made by the trial Court submitted that the entire said discussion is based on the provisions of the Bombay Rent Act, which had stood repealed much prior to the date of filing of the suit by the plaintiff. The ld. Counsel, in the circumstances, prayed for dismissal of the Civil Revision Application.

7. I have given due consideration to the submissions made by the ld. counsel for the parties. I have perused the judgment passed by the trial Court in Reg. Civil Suit No. 48/2006 and the judgment delivered by the ld. first appellate Court in Reg. Civil Appeal No. 1079/2012. The copies of the depositions of the witnesses examined in the matter are available on record. I have gone through the said evidence as well as the averments in the suit plaint and the written statement.

8. After having considered the evidence on record, it is apparently revealed that the said evidence has not been properly appreciated by the first appellate Court. If the averments in the suit plaint are perused, there remains no doubt that the main ground raised by the plaintiff in order to seek possession of the tenanted

property in possession of the defendant was his *bona fide* need of the said premises. On the basis of the evidence adduced in the matter, the 1d trial Court has recorded an unambiguous finding that the plaintiff has successfully proved that the tenanted premises are *bona fide* required for his son to start the business therein. The issue as about 'default in payment of rent' was also framed by the 1d. trial Court, however, the said issue has been answered in the negative. An issue was also framed by the 1d. trial Court, whether the plaintiff proves that the defendant has alternative premises for running his business and the said issue has been answered in the affirmative.

9. The first appellate Court has reversed the finding recorded by the trial Court on the issue of *bona fide* requirement. The appellate Court has held that the plaintiff has failed in proving his *bona fide* need and has also further held that the greater hardship was likely to be caused to the defendant in case the eviction decree is passed.

10. From the observations made by the first appellate Court in its judgment, it appears that, it has held that the trial Court has passed the decree of eviction based on the provisions in the old Rent Act i.e. the Bombay Rent Act, which had stood repealed on the date of

filing of the suit by the plaintiff. On perusal of the judgment passed by the trial Court, it, however, does not appear that it has passed the decree of eviction on the ground which is not available under the Maharashtra Rent Control Act and was existing in the Bombay Rent Act.

11. No doubt, the plaintiff has averred in plaint that the defendant was in arrears of rent. It is also true that, it is contended in the suit plaint that the defendant is having alternative suitable premises in his possession. However, after having carefully read the judgment passed by the trial Court, I have no doubt in my mind that the trial Court has passed the decree of eviction on the ground of *bona fide* requirement of the plaintiff. Merely because a separate issue has been framed by the trial Court whether the plaintiff proves that the defendant has alternate premises for his business and has answered the said issue in the affirmative, cannot be interpreted to mean that the decree of eviction is passed on that ground or on that sole ground.

12. In the old Act i.e. Bombay Rent Act, there was a specific ground i.e. Section 13(1)(1) to the effect that “the tenant after coming into operation of this Act has built, acquired vacant possession

of or been allotted to suitable residence”. Admittedly, in the Maharashtra Rent Control Act, 1999, there is no such ground u/s 16 of the said Act. It is to be however noted that, sub-section 2 of Section 16 mandates that, “no decree for eviction shall be passed on the ground specified in clause (g) of Section 1 if the court is satisfied having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant, greater hardship would be caused by passing the decree than by refusing to pass it”. Section 16(1)(g) provides that, the landlord shall be entitled to recover the possession of any premises if the court is satisfied that the premises are reasonably and bona fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held. It is thus evident that, Section 16(1)(g) and Section 16(2) are to be conjointly read and unless the requirements as are mentioned in both these provisions are complied with, no decree of eviction can be passed on the ground of *bona fide* requirement.

13. Looking to the tenor of the judgment passed by the trial Court, it clearly appears that, the issue no. 4 - “whether the plaintiff proves that the defendant has alternative premises for carrying on his business”, is framed by it having regard to the provisions u/s 16(2) of

the Maharashtra Rent Control Act. It does not appear to me that any error has been committed by the trial court in framing the specific issue as referred to herein above and mere framing of the said issue cannot be interpreted to mean that the eviction was sought of the tenanted premises on the aforesaid ground.

14. It appears that, the counsel for the appellant i.e. original defendant while arguing the appeal before the first appellate court had relied upon the judgment in the case of **Balasaheb Anantrao Bahirat vs. Rohidas Bapusaheb Tupe** reported in 2007(3) Mh.L.J. 467, to urge that the trial Court has manifestly erred in passing the decree of eviction sought under the provisions of the old Rent Act though the suit was filed after coming into force of the new Act i.e. Maharashtra Rent Control Act. In fact, the said judgment could not have been relied upon by the ld counsel appearing for the defendant since the import of the said judgment and the ratio laid down in the said judgment was not in any way of any help to the case of the defendant. It is more surprising and worrying factor that, without properly understanding the ratio laid down in the said judgment and without going through the contents of the said judgment, the first appellate Court also has relied upon the said judgment.

15. In the case of **Balasaheb Bahirat** (cited supra) also, one of the ground in challenge to the decree of eviction was that the suit filed by the landlord was under the Rent Act namely the Bombay Rent Act, though it was filed after the commencement of the Maharashtra Rent Control Act, 1999 and therefore the proceedings for eviction were not maintainable *ab initio*. In the said matter, the decree of eviction was sought on two grounds namely; default in payment of rent and *bona fide* need of suit premises for personal occupation of the landlord. In fact, even in the new Act, both the aforesaid grounds are available for seeking decree of eviction, however, the objection as above was raised. More important are the observations made by this Court dealing with the arguments advanced as above in the said matter. This Court has held thus:

“Where the landlord instituted suit for eviction of the petitioner tenant after 31st March, 2000, merely because he had referred to the provisions of the old Rent Act, the proceedings cannot be held to be bad in law or not maintainable. Once it was clear that the proceedings were initiated on or after 31st March, 2000 and were relating to the subject of eviction of tenant from a building, it could not have been tried as one under old Rent Act which was already repealed on 31st March, 2000 and was replaced by the new Rent Act. The jurisdiction of the Court depend upon the facts pleaded in the application and not on the basis of the provisions of law cited by the party in the application. Once the pleadings in the application filed by the respondent disclosed necessary facts which revealed the cause of action in terms of the provisions of the new Rent Act, nothing prevented the Small Causes Court, which is the Court duly empowered to entertain the applications for eviction under the new Rent Act, to entertain the application filed by the respondent irrespective of the fact that the application referred to the provisions of the old Rent Act.

16. In the present matter also, merely because some averments are made in the plaint to the effect that the defendant is having alternative suitable premises available to run his business cannot be interpreted to mean that the decree of eviction was sought under the provisions of the old Rent Act which was not in existence on the date of filing of the suit. In fact, as I noted herein above, the decree was not sought by the plaintiff on the said ground and the main ground which was raised by the plaintiff to seek the decree of eviction was, his bona fide requirement of the suit premises. I reiterate that, in view of the provisions u/s 16(2) of the Act, it was incumbent on part of the plaintiff to prove that the greater hardship was likely to be caused to him if the decree of eviction is refused. In order to prove that no greater hardship was likely to be caused to the defendant, the plaintiff has taken the averments to the effect that the defendant has other reasonable accommodation available to run his business whereas; he was not having any other accommodation than the tenanted premises for his son to run the business. The ld. first Appellate Court has failed in appreciating and interpreting the aforesaid provisions and has also misread the judgment in the case of **Balasaheb** (cited supra).

17. Now it is to be seen, whether the finding recorded by the first appellate Court that the plaintiff has failed in proving bona fide requirement of the tenanted premises for his own use can be sustained. In the suit plaint, it is the assertion of the plaintiff that the tenanted premises are required for his son to start the business therein. As is revealing from the facts which have come on record, the plaintiff is resident of Pahur, Tq. Jamner and his own house as well as agricultural lands are there. It has also come on record that, out of two sons namely Vijay and Sunil, now only Vijay is surviving and Sunil has expired. It has also come on record that, Vijay is running the business of fertilizers and seeds at Pahur. It has also come on record that the plaintiff does not have any other accommodation at Jalgaon except the tenanted premises for his son to start the business at Jalgaon. It has also come on record that the defendant has two storeyed building of his ownership in the area of Navipeth, Jalgaon and same is in his possession. It has also come on record that, the entire area of Navipeth is commercial and market area. It has also come on record that, the defendant has one more premises in his possession in the premises of the Agricultural Produce Market Committee, Jalgaon. It has also come on record that, the defendant has three acres of land in the MIDC area of Jalgaon.

18. In view of the facts which have come on record as above, according to me, the ld. trial Court had rightly held that the plaintiff had successfully proved his bona fide need of the suit premises. As against it, if the discussion made by the ld first appellate Court on the point is perused, it appears wholly illogical. It also reveals that, the first appellate Court has selectively read the evidence of the plaintiff as well as the defendant. No doubt, the plaintiff in his testimony before the court has made a mention that the tenanted premises are required for his grandsons, however, the said statement cannot be read incompletely or in isolation. I deem it appropriate to reproduce the said version in the testimony of the plaintiff as it is in vernacular, which reads thus:

“मला दोन मुले (1) विजय, (2) सुनिल अशी आहेत. त्यांना जळगांव शहरात उद्योगाचे साधन नाही. त्यांना जळगांव शहरात सदर मिळकतीत धंदा करावयाचा असल्याने मला वरील कलम 1 मधील प्र. वादीचे ताब्यातील मिळकतीचे कब्जाची जरूरी व आवश्यकता आहे. तसेच माझे मुलांचे, नातवांचे, धंद्यासाठी सुध्दा सदर मिळकतीची जरूरी आहे. वरील जागेशिवाय माझेजवळ धंद्यासाठी जळगांव शहरात कोणतीही मिळकत नाही. मी व्यापारी वर्गातील प्रतिष्ठित व्यक्ती आहे.”

19. It does not appear to me that, the aforesaid evidence of the plaintiff can be interpreted to mean that he was seeking the possession of the tenanted premises for his grandsons. The ld. Appellate Court has selectively read the said evidence which shows the perverse attitude and approach of the first appellate Court in appreciating the evidence of the plaintiff. Similar perversity has been

shown by the first appellate Court in recording a finding to the effect that the only son surviving of the plaintiff is running a business at Pahur and he may therefore not require the suit premises which are situated at Jalgaon. I deem it appropriate to reproduce herein below the observations made and findings recorded by the first appellate Court in para 20 and 21 of the judgment which read thus:

20. Plaintiff's argument is that defendant has other property for doing business hence defendant should be evicted for plaintiff's future generation. As of today no need is seen for plaintiff's son and grandsons. They would require suit premises in future hence plaintiff has filed this suit. The need in future cannot be treated as bonafide need and requirement of plaintiff. At present plaintiff himself being aged is not able to do any business. He do not reside in Jalgaon. He has only son who has established business of seeds and fertilizer with shop godown at Pahur.

21. At present no bonofide need of plaintiff is seen. Defendant will have to lose his business from main market, if decree of eviction is passed. The defendant is doing business here for more than 40 years. Earlier also suits are filed to evict the defendant, but was in vain. The plaintiff is new landlord of defendant, has made another attempt by filing this suit. Defendant have other two properties do not create ground of bonafide requirement to plaintiff. No hardship will be caused to plaintiff if decree is refused but hardship will be caused to defendant whose business of 40 years will be shut down from main market area at Jalgaon. The observation of Lower Court that defendant ought to search another premises but defendant did not do any effort hence defendant's conduct is dishonest and not proper hence defendant should give possession is totally erroneous. The provisions of Bombay Rent Act are not applicable to present suit but leaned Trial Court has considered Bombay Rent Act and therefore admitted error in Judgment. Hence, point Nos. 1 and 2 are answered in the negative. Judgment and Decree of Court requires interference and is set aside. Hence, point No. 3 is answered in the affirmative.

20. The observations made as aforesaid are not only contrary to the evidence on record and hence perverse, but are also wholly illogical and based on surmises. Even if it is accepted that, the son of

the plaintiff is running a business at Pahur, that itself cannot nullify the need of the suit premises situated at Jalgaon. The plaintiff in his evidence has specifically deposed that, his son wants to start business at Jalgaon in the tenanted premises. The question arises, can a need so canvassed by the plaintiff can be held to be not genuine on the ground that his son is running a business at Pahur. The question also arises, can a person running a business at Pahur be prevented or restricted from starting his business at Jalgaon on the ground that he is already running a business at Pahur. Pahur is a village place. There is every reason to believe that the son of the plaintiff may be desiring or aspiring for starting his business at the district place at Jalgaon for better prospects, more particularly when his father is having the premises of his own in the market area of Jalgaon. Moreover, where to run the business is the choice of the plaintiff and his son. As such the fact that, the son of the plaintiff is having a settled business at Pahur, cannot be a ground to hold that his need of suit premises is not *bona fide*.

21. It is further noticed that, while appreciating the case of the defendant the first appellate Court has applied the different norms. In his evidence the defendant has specifically admitted that, in Navipeth, Jalgaon, he has two storeyed building of his ownership

and it is in his possession. The defendant has also admitted that, Navipeth is fully commercial area. Defendant has also admitted that, the said premises in Navipeth can be used by him even for his business. Defendant has also admitted that, he is having one more premises in his occupation in the premises of the Agricultural Produce Market Committee, Jalgaon. However, ignoring all these admissions, the 1st first appellate Court in para 21 of the impugned judgment has recorded the conclusions which I have reproduced herein above. Though it has been stated by the defendant that in the building owned by him situated at Navipeth, there is a tenant in the ground floor portion, no further information is provided by him whether any attempt was made or is being made to recover the possession from the said tenant. Therefore, the conclusions recorded by the first appellate Court that the greater hardship will be caused to the tenant in the event the decree of eviction is passed, is contrary to the evidence on record and hence cannot be sustained. The first appellate Court has wrongly reversed the decree of eviction passed by the trial Court. The findings recorded by the first appellate Court are contrary to the evidence on record and hence perverse.

22. I reiterate that, the plaintiff has sufficiently proved his bona fide need of the suit premises. Admittedly, the plaintiff does not

have other premises of his ownership at Jalgaon except the tenanted premises. As against it, the defendant has two storeyed building of his ownership in the commercial area of Jalgaon and also one more shop in the premises of the market committee. Nothing has come on record so as to negate the bona fide need of suit premises as canvassed by the plaintiff. As I have elaborately discussed, having a shop at Pahur could not have been a ground for refusing the decree of eviction. For all these reasons, the judgment and decree passed by the first appellate Court deserves to be quashed and set aside. In the result, the following order is passed.

ORDER

- (i) The judgment and decree dt. 04.04.2016 passed by the learned Ad-hoc District Judge-2, Jalgaon in Reg. Civil Appeal No. 1079 of 2012 is quashed and set aside.
- (ii) The judgment and decree dt. 21.06.2012 passed by the Jt. Civil Judge, Jr. Divn., Jalgaon, in Reg. Civil Suit No. 48 of 2006 is confirmed.
- (iii) The Civil Revision Application is allowed in the aforesaid terms with costs.

(iv) Pending civil application stands disposed of.

[P. R. BORA]
JUDGE

. At this juncture, Shri. P. P. Dhorde, learned counsel for respondent has requested to stay the execution of this judgment stating that the respondent intends to approach the Hon'ble Apex Court. However, I am not inclined to accede to the request so made in view of the fact that, though the decree of eviction has been passed in the year 2012, the plaintiff has been deprived fruits thereof till this date. I need not reiterate the facts which I have discussed in the body of the judgment to the effect that the defendant is already having premises of his own in the market area of Jalgaon and as such, in no case it can be accepted that the greater hardship is likely to be caused to the defendant because of the decree of eviction passed against him. The request is therefore rejected.

[P. R. BORA]
JUDGE