

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

CIVIL REVISION APPLICATION (ST.) NO. 28993 OF 2019

Shah Asoo Lakhamshi (Since deceased) Through LRs. & Ors.	...	Applicants
V/s.		
Naresh Sabrya Kamat	...	Respondent

Mr.Anil Mishra a/w. Mr.Sushmay Saha for Applicants.
Mr.PK.Dhakephalkar, Senior Advocate a/w. Mr.D.S. Padwal for Respondent.

CORAM : A.S. GADKARI, J.

DATE : 12th December 2019.

PC. :

1] By the present Revision Application under Section 115 of the Civil Procedure Code (for short, “Code”), the applicants have impugned Judgment and Order dated 26th August 2019 passed in Appeal No.36 of 2017 in RAE & R Suit No.318/909 of 1994, thereby dismissing the said Appeal with costs and confirming the Judgment and Decree dated 28th November 2016 passed by the learned Judge of the Small Causes Court, Mumbai in RAE & R Suit No.318/909 of 1994.

2] Heard Mr.Mishra, learned counsel for the applicants at length and Mr.Dhakephalkar, learned counsel for the respondent. Perused the entire record annexed to the application.

3] The record indicates that, the respondent-landlord has instituted aforestated RAE & R Suit No.318/909 of 1994 against the applicants under the provisions of the Bombay Rent Control Act, 1947 on the ground of arrears of rent and permitted increases and for bonafide requirement.

The Trial Court has decreed the said suit by its Judgment and Order dated 28th November 2016 on the ground of arrears of rent, willful default in making payment of rent and permitted increases and also on the ground that, the respondent requires the suit premises reasonably and bonafide for his own use and occupation. As noted earlier, the Appeal No.36 of 2017 has been dismissed by the Appellate Bench of the Small Causes Court with costs by its Judgment and Order dated 26th August 2019.

4] Mr.Mishra, learned counsel for the appellants submitted that, in the cross examination, the respondent-landlord has admitted that, he is having other premises for his disposal and he is not in need of suit premises. He submitted that, the admissions given by the respondent in his cross-examination have not been considered by both the Courts below while passing decree against the applicants. He submitted that, the suit premises is a composite premises comprising of residential and commercial premises. That, commercial premises ad-measures about 130 sq.ft. is the only source of livelihood for the applicants. He submitted that, while passing impugned Judgments and Orders, both the Courts below have failed to exercise their

jurisdiction vested in it by law by not appreciating the facts on record in its proper perspective. He therefore submitted that, the Judgments and Orders passed by both the Courts below may be set-aside by allowing the present Revision.

5] Per contra, Mr.Dhakephalkar, the learned counsel appearing for the respondent vehemently opposed the Revision and supported the impugned Judgments and Orders. He submitted that, the Trial Court at the first instance and the Appellate Court in its Appellate Jurisdiction have properly recorded findings thereto, which are within the conformity of settled principles of law and needs no interference by this Court in its Revisional Jurisdiction under Section 115 of the Code. He therefore prayed that the present Revision may be dismissed summarily.

6] A minute perusal of record would indicate that, the applicant No.1B, i.e. original D.W. No.1-Hemchand Asoo Gogri, in his evidence has admitted that, he is residing at '394, Moti Mahal' and not at the suit premises. That the premises at Moti Mahal is of 250 sq.ft.. That he is also in possession of additional room i.e. House No.105 at Madhala Pada. He is also having premises at House No. 396, 'Gulbana House'. He has also admitted that there is a shop in his possession and it is under lock. He has legal right over the premises at House No.105 of 'Madhala Pada'. Thus it is apparent that the applicants are having in their possession 4 premises including the suit premises. Out of the

said 4 premises, 2 premises are commercial premises. As against this, the respondent has asserted that he requires the suit premises reasonably and bonafide for his own use to earn livelihood as he is unemployed. He has further asserted that, he does not have sufficient funds and/or source of income to purchase new premises. He has further deposed that, his family is growing and his son is getting married. That the residential premises is required for accommodating his married son. That due to the absence of sufficient premises, the respondent and his family members are suffering from great hardship done by the applicants. Perusal of evidence available on record including the findings recorded by the Trial Court would clearly indicate that, the respondent has proved beyond doubt that the applicants have failed and neglected to pay arrears of rent and permitted increases. That despite receipt of notice under Section 12 of the Rent Act, the applicants filed an application for depositing the rent in the Trial Court after a period of two years and did not file an application for fixing standard rate within statutory period. It is further proved that, the respondent requires the suit premises reasonably and bonafide for his own use and occupation. Taking into consideration the facts involved in the present case, undoubtedly the respondent will suffer greater hardship, if the decree passed in favour of the respondent is not sustained or is reversed. The record further indicates that, the Appellate Court after re-appreciating the entire evidence available on record has dismissed the said appeal by confirming the

decree passed by the Trial Court. It is the trite position of law that, land-lord is the best judge of his residential requirements and it is for him to decide how and in what manner he should live. If he desires to beneficially enjoy his own property when the other property occupied by him as a tenant or on any other basis is either insecure or inconvenient, it is not for the Courts to dictate him to continue to occupy such premises. Reliance is placed on a decision of the Hon'ble Supreme Court in the case of *Meenal Eknath Kshirsagar Vs. Traders & Agencies & Another*, reported in 1997(1) Mh.L.J. 121.

7] During the course of arguments, upon a query raised by this Court, the learned counsel for the applicants, on instructions from the applicant No.1-G (Smt.Nayna Pravin Chheda @ Nayna Asoo Shah) submitted that, till date the applicants only are in actual possession and occupation of the suit premises and no third party right, title and/or interest is created.

8] After perusing the entire record, this Court is of the considered view that, the Trial Court has exercised jurisdiction as vested in it properly and there is no perversity or error in the Judgments and Orders passed by both the Courts below.

In view thereof, this Court is of the considered view that, the present Revision is de hors of any merits and is accordingly dismissed.

9] The applicants are directed to deliver vacant and peaceful possession of the suit premises to the respondent within a period of 30 days

from today. If the applicants failed to deliver vacant and peaceful possession of the suit premises within a period of 30 days from today, the respondent will be at liberty to execute the decree passed by the Trial Court dated 28th November 2016 by taking assistance from the local police in that behalf. The applicants are directed to clear entire arrears of rent along with permitted increases within a period of fifteen days from today.

The Order passed by the Trial Court for an enquiry for mesne profit as contemplated under Order 20 Rule 12(1)(c) of the Code be initiated by the Trial Court.

[A.S. GADKARI, J.]