

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

CIVIL REVISION APPLICATION NO. 662 OF 2019

Ms.Niharika Nitish Tipnis & Anr.	...	Applicants
V/s.		
The Nayar Samaj Co-Operative Hostel Ltd.	...	Respondent

Mr.Kishor Tembe for Applicants.
Mr.Dilip Rai i/b. Ms.Aruna Singh for Respondent.

CORAM : A.S. GADKARI, J.

DATE : 17th December 2019.

PC. :

1] By the present Revision under Section 115 of the Code of Civil Procedure (for short, "Code"), the legal heirs of original defendant/tenant have impugned Judgment and Order dated 9th October 2019 passed in Appeal No.106 of 2013, by the Appellate Court of the Court of Small Causes at Mumbai, dismissing the said Appeal with costs and confirming the Judgment and Decree dated 14th June 2013 passed in RAE Suit No.460/848 of 2008, directing the applicants/defendants to handover vacant and peaceful possession of the suit premises to the respondent/original plaintiff.

2] Heard Mr.Tembe, learned counsel for the applicants and Mr.Rai, learned counsel for the respondent. Perused the entire record annexed to the

application.

3] The record indicates that, the respondent had instituted the said RAE Suit No.460/848 of 2008 in the Court of Small Causes for eviction of the original tenant Mr.Krushnakant H. Tipnis for recovery of the suit premises on the ground of bonafide and reasonable requirement under Section 16(1)(g) of the Maharashtra Rent Control Act, 1999.

4] It is the case of the respondent that, it is a registered Society under the provisions of Societies Registration Act, 1860 and is conducting various activities for the benefit of its community. The respondent runs an Ayurvedic Dispensary in the building where the suit premises is situated. That the respondent also makes available premises to the needy students and working men for their stay and accommodation hailing from their community on nominal charges. That in view of the expansion of the activities of the respondent, there is a reasonable and bonafide requirement of the premises, which is let to the original tenant. After receipt of summons, the original tenant appeared in the suit and filed his written statement. The Trial Court framed issues and recorded evidence of witnesses. After hearing the parties to the said suit, the Trial Court was pleased to decree it by its impugned Judgment and Order dated 14th June 2013. As noted earlier, the legal heirs of the original tenant preferred Appeal No.106 of 2013 before the Appellate Bench of the Small Causes Court. The Appellate Court has turned down the said appeal by

its Judgment and Order dated 9th October 2019.

The record indicates that, during the pendency of the said suit, original tenant Mr.Krushnakant H. Tipnis expired and his legal heir was brought on record.

5] Mr.Tembe, learned counsel for the applicants submitted that, the respondent is having substantial area in its possession which can clearly be discerned from the evidence on record. He submitted that, the respondent is running a dispensary so also a hostel in the building where the suit premises is situated and therefore the plea of the respondent that it requires suit premises reasonably and bonafide cannot be accepted. He submitted that, the object of the trust of the respondent nowhere mentions that they can conduct an Ayurvedic Dispensary and in view thereof, the claim of the respondent for having the suit premises for bonafide requirement ought to have been rejected by both the Courts below. He submitted that, both the Courts below have failed to take into consideration these two vital aspects of the matter and therefore, the impugned Judgments and Orders may be set-aside by allowing the present Revision Application.

6] Per contra, learned counsel appearing for the respondent-trust vehemently opposed the application and submitted that, in view of the various activities undertaken by the Trust, it requires the suit premises reasonably and bonafide. He submitted that, the respondent has proved the said fact by leading

substantial and cogent evidence in that behalf before the Trial Court, which has also been upheld by the Appellate Court. He therefore prayed that, the present Revision may be dismissed summarily.

7] As noted in the forgoing paragraphs, it is the specific and categorical case of the respondent-society that, it is running an Ayurvedic Dispensary on the first floor of the suit building. That it provides accommodation in the hostel run by the society to needy students and working men for their stay on nominal charges in furtherance of the object of the trust. That in view of growing activities and for providing accommodation to more members/needy students and working men to accommodate in the suit property, respondent requires the suit premises reasonably and bonafide.

8] Mr.Subhash Kumar (PW.-1) led evidence on behalf of the respondent-society. The said witness has duly supported the case of the respondent by placing on record necessary and relevant material. The respondent has proved its reasonable and bonafide requirement of the suit premises. It is to be noted here that, during the pendency of the suit itself, the original tenant Mr.Krishnakant H. Tipnis expired and thereafter the suit was contested by his legal heir. The applicants in the cross-examination of the plaintiffs witnesses have brought on record certain admissions. It is brought on record that, the respondent is providing accommodation to bachelors and working men and they are accommodating even five persons in a room. This

clearly establishes the fact that, for want of sufficient accommodation, the respondent requires suit premises for bonafide purpose. The evidence of original defendant No.1 clearly indicates that, he has admitted existence of one flat which was in possession of his daughter-in-law i.e. wife of the respondent No.1(a). In cross-examination, the witness of defendant has further admitted that, flat Nos.603 and 703 stand in the name of Smt.Leena Nitish Tipnis i.e. wife of defendant No.1(a). In view of the demise of the original defendant No.1, his requirement of the residential premises ceases to exist. As noted earlier, the respondent No.2-Mrs.Leena is having 2 flats in her name. Thus it is clear from the record that, no hardship of any nature would cause to the applicants if decree is passed in favour of the respondent.

9] After perusing the entire record, this Court is of the considered view that, both the Courts below have properly exercised their jurisdiction vested in them and have acted in exercise of jurisdiction conferred upon them in its proper perspective. The Judgment and Decree passed by the Trial Court is a well reasonable judicious Order and needs no interference by this Court in its Revisional Jurisdiction.

10] The Revision Application being dehors of merits is accordingly dismissed.

11] At this stage, Mr.Tembe, learned counsel for the applicants submitted that, the applicants intend to challenge the present Order before the

Hon'ble Supreme Court and therefore the operation and implementation of the present Order may be stayed for a period of six weeks.

12] In view thereof, the period to vacate the suit premises granted by the Appellate Court by its Judgment and Order dated 9th October 2019 is hereby extended by 60 days from today.

[A.S. GADKARI, J.]