

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL REVISION APPLICATION NO. 308 OF 2008**

Nathuram Laxman Fursutkar

.....Applicant.

Vs.

Dinanath Pandurang Kadu & Ors.

.....Respondents.

Mr. P.B. Shah a/w Ms. Gunjan Shah for the Applicant.

Mr. Akshay Tapkir for the Respondent Nos. 1 to 3.

CORAM : A. S. GADKARI, J.**DATE : 28th JANUARY, 2020.****PC:-**

By the present Revision Application, the Applicant-Original Defendant/Tenant has impugned Judgment and Order dated 12th February, 2008 passed in Civil Appeal No. 751 of 2004, by the learned Ad-hoc District Judge-11, Pune, thereby setting aside the Judgment and Order dated 22nd November, 2004 passed in Civil Suit No. 598 of 2001 by the learned Judge of the Small Causes Court, Pune, dismissing the said Suit.

2 Heard Mr. P.B. Shah, learned counsel for the Applicant and Shri. Akshay Tapkir, learned counsel for the Respondent Nos. 1 to 3. Perused the entire record.

3 The Applicant is the tenant of Respondents in the said premises having 6 khana in corrugated ceiling shade admeasuring 45 x 13 feet on the ground floor standing at C.T.S. NO. 1226, Kasba Peth, Pune-411 011

and within the limits of Pune Municipal Corporation. The suit premises has been reduced by 10 feet as that piece or parcel of land was acquired by the Municipal Corporation for road widening and therefore, now the suit premises is admeasuring 35 x 13 feet. The Respondents instituted a Civil Suit bearing No. 598 of 2001 in the Court of Small Causes, Pune against the Applicant for eviction from the suit premises, on the ground of default in payment of rent; change of use of suit premises for other purpose than for which it was let; permanent addition and alteration in the suit premises and for bonafide and reasonable requirement of the Respondents for the business of their family.

In the plaint, the Respondents have categorically averred that, the suit premises is a commercial premises and it was being used as Godown for cow-dunk cake. That, the grand-father of the Applicant took the premises for commercial purpose from the predecessor in title of the Respondents and the Applicant was using the said shed for commercial purpose. That, the Applicant was residing at 1356, Kasba Peth, Pune- 411 011. The said property was owned by him. The Applicant subsequently and purposely disposed off the said property i.e. 1356, Kasba Peth, Pune by receiving huge amount and come to reside at the suit premises which is a commercial premises. That, at the request of the Applicant, the Respondents granted permission to have water tap connection and also construction of WC (Toilet).

It is further stated that, the Respondents were in dire and bonafide need of the suit premises, as there are 24 members in their family. That, the Original Plaintiff No.2 Shri. Keru Pandurang Kadu and his brothers Shamkant and Jaywant were unemployed. They are Coppersmith and work whenever available to them. Though they have acquired an art, but for want of premises/place, they could not carry out their profession. That, sons of Plaintiff No.1 Dinanath Pandurang Kadu namely Vasant and Hemant are in need of commercial premises too, as they were to start their ancestral business of which they were having substantial knowledge. Therefore, for conducting commercial activities and as the Respondents were intending to start commercial enterprise, the said bonafide need was propounded by them.

4 Perusal of plaint would indicate that, in the pleadings itself, the Respondents have admitted that, the Applicant was and is using the suit premises for residential purpose for pretty long time, prior to institution of the suit by the Respondents. The present suit was instituted by the Respondents apart from other grounds, mainly on the ground that, they required the said residential premises, bonafide and reasonably for establishment of their commercial activities.

The Respondents also led evidence in consonance with their pleadings in the plaint. The Trial Court framed the following issues and answered accordingly.

1. Do the plaintiffs prove that defendant was not ready and willing to pay rent and became defaulter? In Negative
2. Whether the plaintiffs are entitled to recover claim amount? In Negative
3. Do plaintiffs prove that defendant has change use of the premises for other purpose than for which it is let? In Negative
4. Do plaintiffs prove that defendant has made permanent addition and alteration in the suit premises? In Negative
5. Do the plaintiffs prove that they required suit premises bonafide and reasonably for the business of their family? In Negative
6. To whom greater hardship will be caused at the event of passing or refusing to pass decree of possession? In favour of defendant
7. What order and decree? As per final order.

5 The Trial Court by its well reasoned Judgment and Order dated 22nd November, 2004, dismissed the said suit instituted by the Respondents.

 In an Appeal bearing Civil Appeal No. 751 of 2004, the Appellate Court held that, the Respondents have proved their bonafide

requirement of the suit premises and while allowing the said Appeal by its Judgment and Order dated 12th February, 2008, decreed the suit by setting aside Judgment and Order dated 22nd November, 2004 passed by the Trial Court.

6 As noted above, a bare perusal of the Plaint filed by the Respondents and the evidence adduced by them, would clearly indicate that, the Applicant was and is using the suit premises for his residential purpose only and the Respondents are seeking eviction of the Applicant from the suit premises on the ground of their bonafide and reasonable requirement for establishing commercial enterprise and/or for conducting commercial activities thereon.

7 Provisions of Section 25 of the Bombay Rents, Hotel, and Lodging House Rates Control Act, 1947 are *pari-materia* with Section 30 of the Maharashtra Rent Control Act, 1999. Section 30 of the Maharashtra Rent Control Act, prohibits conversion of residential into commercial premises which on the date of commencement of the said Act were used for a residential purpose.

The Hon'ble, Supreme Court in the case of *Bapubhai Mohanbhai Vs. Mahila Sahakari Udyog Mandir*, reported in (1975) 2 SCC 492, while analysing the provision of Section 25 of the Bombay Rents, Hotel, and Lodging House Rates Control Act, 1947, in paragraph Nos. 6 and 8 has held as under:-

- “6. The requirement of the respondent in the instant case cannot ever be called reasonable, if the very statute under which it seeks relief contains an injunction that it shall not use residential premises for a non-residential purpose. Not only does the statute contain an injunction against the user of residential premises for a non-residential purpose, but it makes it penal for a landlord to use for a non-residential purpose any premises which were used for a residential purpose on the date when the Act came into force. In the light of Section 25(1), granting a decree to the respondent for possession of the residential premises on the ground that it requires those premises for a non-residential purpose is to pave the way for its prosecution and punishment under Section 25(2). In fact, such a decree would be self-defeating because, whereas the decree shall have been passed on the ground that the respondent requires the premises for a non-residential purpose, it will not be able to use those premises for the purpose for which the decree was granted, save on pain of prosecution.
8. In short, therefore, though the evidence led by the respondent is sufficient to prove that it requires the suit premises for the purpose of its business, no decree for possession can be passed in its favour as its requirement cannot be said to be reasonable. The requirement runs across a statutory prohibition and is therefore not reasonable.”

8 Thus, under the prevailing law, the Respondents cannot seek eviction of the Applicant from the residential premises for their bonafide and reasonable requirement for commercial purpose. As noted earlier, Section 30 of the Maharashtra Rent Control Act, 1999, prohibits the landlord from conversion of residential into commercial premises or for commercial purpose.

 It is to be noted here that, learned counsel for the Respondents tried to establish the fact that, even as of today the Applicant is using the suit premises for commercial purpose and therefore, the bonafide and reasonable requirement propounded by the Respondents is not prohibited by Section 30 of the said Act.

 The pleadings of the Respondents in their plaint and evidence adduced by them is contrary to the submissions made by the learned counsel for the Respondents. As noted earlier, it is the specific and precise case of the Respondents that, the Applicant has changed the user of suit property from commercial to residential purpose and has also got connection of water tap and constructed WC (Toilet) in it, after getting proper permission from the Respondents. I therefore find that, the submissions made by the learned counsel for the Respondents are contrary to the pleadings and evidence on record.

9 In view of the above, the Applicant succeeds.

 The impugned Judgment and Order dated 12th February, 2008

passed in Civil Appeal No. 751 of 2004, by the learned Ad-hoc District Judge-11, Pune is hereby quashed and set aside and the Judgment and Order dated 22nd November, 2004 passed in Civil Suit No. 598 of 2001 by the learned Judge of the Small Causes Court, Pune, is upheld.

Revision Application is accordingly allowed.

Sanjiv S.
Mashalkar

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by Sanjiv S.
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(A.S. GADKARI, J.)