

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

CIVIL REVISION APPLICATION (ST.) NO. 16416 OF 2019

Natwarlal Mohanlal Pandya & Anr.	...	Applicants
V/s.		
Shamlal Ramnath Lahoti	...	Respondent

Mr.Harshad Inamdar i/b. Mr.Yogesh B. Dandekar for Applicants.
Mr.Rajesh Datar for Respondent.

CORAM : A.S. GADKARI, J.

DATE : 14th February 2020.

PC. :

1] By the present Revision Application under Section 115 of the Civil Procedure Code, the revision applicants/tenants have impugned Judgment and Order dated 26th April 2019 passed in Regular Civil Appeal No. 97 of 2016, by the learned District Judge-6, Thane, dismissing the said appeal and confirming the Judgment and Order dated 30th November 2015 passed in Regular Civil Suit No. 707 of 2010 by the learned Civil Judge Junior Division, Bhiwandi, decreeing the Suit filed by the respondent for eviction of the applicants from the suit premises under the provisions of the Maharashtra Rent Control Act, 1999 (for short, "the said Act").

2] Heard Mr.Inamdar, learned counsel for the revision applicants and Mr.Datar, learned counsel for the respondent. Perused the entire record annexed to the revision application.

3] The record reveals that, the respondent-landlord had filed Regular Civil Suit No. 707 of 2010 for eviction of the applicants on the ground of arrears of rent, bonafide and reasonable requirement, change of user and subletting of the suit premises by the applicant No.1 in favour of the applicant No.2. The Trial Court framed issues below Exhibit-11. After recording evidence of witnesses and hearing the parties thereto, the Trial Court decreed the said Suit filed by the respondent by its Judgment and Order dated 30th November 2015 and directed the applicants to deliver vacant and actual possession of the suit premises as described in para No.1 of the plaint to the respondent within a period of three months from the date of passing of the said Order. The Trial Court has also directed to conduct a separate enquiry in respect of mesne profit as contemplated under Order 20 Rule 12 of the Civil Procedure Code from the date of filing of the Suit till actual delivery of possession. The applicants are unsuccessful before the appellate Court and their Regular Civil Appeal No. 97 of 2016 has been turned down with costs by the learned District Judge-6, Thane by its impugned Judgment and Order dated 26th April 2019.

4] Mr.Inamdar, learned counsel appearing for the applicants submitted that, as a matter of fact, the respondent-landlord has permitted the

applicants to use the Suit premises for commercial purpose. He submitted that, the said fact can be discerned from the 'Consent Agreement' dated 17th October 1984 executed between the applicant No.1 and the respondent, which is on record at Exhibit-61. He submitted that, the applicant No.1 is father of applicant No.2. That the applicant No.1 permitted the applicant No.2 to use and occupy the Suit premises and therefore, it cannot be said that, it amounts to subletting of the Suit premises. He submitted that, since 1980, the applicant No.1 is running a Tax Consultancy Firm in the premises to which the respondent did not object and therefore, his continuous use of the Suit premises for commercial purpose would not amount to change of user. He submitted that, the respondent-landlord has got possession of two other rooms from the Suit building during the pendency of the present litigation and therefore, the alleged need of respondent-landlord as of today ceases to be in operation. He submitted that, both the Court below have failed to take into consideration these points and therefore, the impugned Judgment and Order may be set-aside by allowing the present Revision Application.

5] Per contra, Mr.Datar, learned counsel appearing for the respondent-landlord, vehemently opposed the revision and submitted that, without there being lawful permission from the respondent, initially the applicant No.1 and subsequently applicant No.2 have converted the residential premises allotted to them on rental basis for its use for commercial purpose and therefore, it is in

violation of provisions of the said Act. He submitted that, the applicants received the suit summons at their residential address situated at Mulund and it shows that, the applicants are not residing at the Suit premises. He submitted that, the applicants in their evidence have admitted the fact that, the said Suit premises is being used for commercial purpose and therefore, the contention of the respondent that, the applicants have changed user of the Suit premises is proved beyond doubt. He submitted that, there are no merits in the Revision Application and same may be dismissed summarily.

6] At the outset, it has to be noted here that, perusal of the said Exhibit-61, i.e. Consent Agreement, dated 17th October 1984, would clearly indicate that, nowhere the respondent has admitted or granted permission in favour of applicant No.1 to use the Suit premises for commercial purpose. What can only be discerned from the contents of the said agreement is that, the respondent was aware of the fact that, the Suit premises was being used for residential and office purpose (commercial purpose), which was then in the possession of the applicant No.1. Assuming for the sake of argument that, the Suit premises was given to the applicant No.1 for composite purpose of residence and business/commercial activity, the complete change of its user to commercial activity was not expressly permitted by the respondent-landlord.

Section 30 of the said Act postulates that, landlord shall not use or permit, to be used for commercial purpose any premises which, on the date of

commencement of this Act, were used for a residential purpose. In the present case, in the absence of an express permission from the landlord, the contention of the applicants that, the Suit premises was permitted to be used for commercial purpose cannot be accepted and is hereby rejected.

7] The record further indicates that, the applicant No.2 in his evidence has admitted the fact that, the Suit summons was served upon the applicant No.1 at their residential address at Mulund. The respondent is successful in bringing on record the fact that, the applicants have acquired alternate accommodation for their residence at Mulund and are residing therein. The ground for bonafide and reasonable requirement as raised by the respondent has been duly proved by him by leading substantial and cogent evidence in that behalf. It has been brought on record that, there are many members in the family of the respondent, which consist of himself, his wife, two sons, two daughters-in-laws and grand sons. His family is growing. His sons and other family members require the Suit premises bonafide and reasonably. That the premises where the respondent-landlord is presently living is insufficient for his growing family.

8] By now it is settled position of law that, the landlord is the best judge of his bonafide and reasonable requirement and it is not for the tenant to decide it. The Trial Court at the first instance and the Appellate Court in its Appellate jurisdiction has properly scrutinized entire evidence available on

record.

A minute perusal of Judgments and Orders passed by both the Courts below clearly indicate that, they have exercised jurisdiction vested in them by law properly and have not failed to exercise it. There is no irregularity or material illegality in the impugned Judgments and Orders.

This Court is of the considered view that, both the Court below have not committed any error either in law or on facts while passing the impugned Orders.

9] In view thereof, I find no merits in the present Revision Application. Revision Application is accordingly dismissed.

10] The applicants are directed to vacate and deliver vacant and peaceful possession of the Suit premises mentioned in para No.1 of the plaint to the respondent within a period of three weeks from the date of uploading of the present Order on the High Court Website.

11] Till the applicants deliver vacant and peaceful possession of the Suit premises, the applicants or any other person or agent claiming through the applicants shall not create any third party right, title or interest in the suit property.

12] If the applicants failed to deliver vacant and peaceful possession of the suit premises in favour of the respondent as mentioned hereinabove, the respondent-landlord will be at liberty to execute the Decree. In that case, the

Executing Court may consider the prayer of the respondent-landlord for police protection in that behalf.

13] Revision Application is accordingly dismissed in the aforesaid terms.

[A.S. GADKARI, J.]

Omkar S.
Kumbhakarn

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by Omkar S.
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