

Tandle

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION (ST) NO. 31165 OF 2019
WITH
INTERIM APPLICATION NO. 01 OF 2019

Grace Jahoshawa Mackwana

... **Applicant.**
(Orig. Defendant)

Versus

Arvind Dnyaneshwar Nimbalkar

... **Respondent.**
(Orig. Plaintiff)

Mr. Vaibhav V. Ugle, Advocate for the Applicant.

Mr. S. R. Ronghe, Advocate for the Respondent.

Ms. Rebecca Mackwana, daughter of the applicant present.

CORAM : A. S. GADKARI, J.

DATE : 30th JANUARY, 2020

P. C. :

1. By the present Revision, the applicant-tenant has impugned Judgment and Order dated 18th October 2019 passed in Regular Civil Appeal No. 451 of 2011, by the learned 7th Ad-hoc District Judge, Pune, thereby, dismissing the said appeal with costs and confirming the Judgment and Order dated 16th June 2011, passed by the learned Small Causes Court, Pune in Civil Suit No. 128 of 2008.

2. Heard Mr. Ugle, learned counsel for the applicant and Mr. Ronghe, learned counsel for the respondent. Perused the entire record annexed to the application.

3. The applicant is a tenant in the suit property comprising of two rooms, admeasuring about 12 X 11 sq. ft. and 10 X 11 sq. ft situated at the ground floor of the suit building. The respondent was in bonafide and reasonable need of the suit premises for himself and therefore, filed suit for eviction on the said ground as contemplated under Section 16(1) (g) of the Maharashtra Rent Control Act, 1999 (for short “the said Act”).

It was the case of the respondent that, for the need of existing and growing family he required the suit premises reasonably and bonafide. After receipt of summons, the respondent appeared in the said suit and contested it. The Trial Court, after recording evidence and hearing the parties herein has decreed the said suit by directing the respondent to handover vacant and peaceful possession of the suit premises within the stipulated period, mentioned in its Judgment and Order dated 16th June 2011. The Trial Court, has also directed to conduct inquiry in respect of mesne profits as contemplated under Order 20 Rule 12(c) of the Code of Civil Procedure.

Being aggrieved by the decree of eviction, the applicant preferred Regular Civil Appeal No. 451 of 2011, before the District Court at Pune. The Appellate Court, after re-appreciating the entire evidence available on record, was pleased to dismiss the said Appeal with costs.

4. Mr. Ugle, learned counsel for applicant submitted that, there are about seven rooms in possession of the respondent-landlord. That, the applicant is occupying only two rooms in the suit property and rest of

the suit property is in possession of the respondent. He further submitted that, the applicant is aged about 90 years as of today and greater hardship will be caused to her, if she is directed to vacate the said premises. He submitted that, the Trial Court while passing impugned Decree dated 16th June 2011 has erroneously taken into consideration the future need of the respondent-landlord, interalia that, though the children of respondent were minor on the date of the passing of Decree and in future they will require separate premises for their habitation. He submitted that, evidence adduced by the applicant has not been properly appreciated by the Appellate Court. He, therefore, prayed that, the impugned Judgment and Order may be quashed and set aside by allowing the present Revision Application.

5. Per contra, Mr. Ronghe, learned counsel for the respondent vehemently opposed the appeal and submitted that, the respondent is in bonafide need of the suit premises. He submitted that, at the time of filing of the suit, though the sons of respondent were aged about 5 and 7 years respectively, as of today they are 17 and 19 years of old. He submitted that, the Trial Court, at the first instance and the Appellate Court, in its Appellate jurisdiction, has minutely scrutinized the entire evidence on record and have recorded the findings in favour of the respondent. He therefore submitted that, there are no merits in the Revision and the same be dismissed summarily.

6. Perusal of record would indicate that, there are five rooms at the ground floor and four rooms at the first floor of the suit building. The applicant is residing / occupying two rooms at the ground floor. The respondent is utilizing one room as godown for storage of newspapers as he is in business of distribution of newspapers. The record further indicates that, front side wall of suit property was collapsed and one room situated on the first floor also collapsed. The family of respondent comprising of his aged mother, his younger brother, his wife and their children are residing in the suit premises along with respondent. Though, initially it was contended that the respondent along with his sister Smt. Jyoti Gaikwad was residing with him, the said fact has not been accepted by the Trial Court. In view of the evidence lead by the parties herein, it has come on record that, the said Smt. Jyoti Gaikwad is residing at Hadapsar, Pune. The area of the rooms which are in the possession of the respondent is approximately 10 X 11 sq. ft. each and one of the room is being used for kitchen. The evidence on record clearly indicates that, the area in possession of the respondent is insufficient for him and his family members and the need of respondent/landlord of the suit premises is reasonable and bonafide.

7. Learned counsel appearing for the applicant was persistently canvassed a point that, the applicant is aged about 90 years as of today and if, she is directed to vacate from the suit premises, she will suffer greater hardship from the respondent. Upon a query put by this Court to

the learned counsel for the applicant, about her other family members, the learned counsel on instructions, from the daughter of the applicant, who is personally present in the Court submitted that, there are three daughters of the applicant who are residing with her. All the daughters are above 50 years of age and out of which one of the daughter is employed with a Bank.

At this stage, learned counsel for the respondent, on instructions, submitted that, the applicant is also having a son who is well settled in life and is residing separately in the city of Pune itself. It is thus apparent that, the applicant is having sufficient means to acquire alternate premises and will not suffer greater hardship than the respondent, if decree of eviction is sustained.

8. Perusal of record would indicate that, the respondent has made out a clear case for reasonable and bonafide requirement and greater hardship would be caused to the respondent, if the decree of eviction of applicant is not sustained.

9. The record further indicates that, both the Courts below have exercised their jurisdiction so vested, properly as per the law. There is no illegality or material irregularity committed by both the Courts below, while passing the impugned Judgment and Orders.

After perusing the entire record, this Court is of the considered view that, both the Courts below have not committed any error either in law or on facts. The Revision Application is de hors of

merits.

10. The applicant is directed to handover, vacant and peaceful possession of the suit premises to the respondent within a period of five weeks from today.

11. If the applicant fails to deliver vacant and peaceful possession of the suit premises to the respondent within the said stipulated period, the applicant will be at liberty to recover the possession by executing the decree and in that event, the Executing Court may consider the request of the applicant for providing police protection at the time of taking possession of the suit premises.

12. The Revision Application is dismissed in the aforesaid terms.

13. In view of the dismissal of Revision Application, Interim Application No.1 of 2019 does not survive and is accordingly disposed off.

(A. S. GADKARI, J.)