

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 174 OF 2019

Ramesh Kamlakar Dahale
Age: 45 years, Occu: Business,
R/o: Sarafa Bazar, Nanded

... **Applicant**
(Original defendant)

Versus

- 1) Ratan s/o Shankarrao Bandewar
Died through L.Rs.
- 1/1) Santosh Ratan Bandewar
Age: 40 years, Occu: Business,
R/o: Sushil Jewellers, Shivshankar Niwas,
Near Sonyacha Maroti Temple,
Sarafa Market, Nanded
- 1/2) Sushil Ratan Bandewar
Age: 38 years, Occu: Business,
R/o: Near Sonyacha Maroti Temple,
Sarafa Market, Nanded
- 1/3) Shilpa w/o Abhay Rudrawar (Dhare),
Age: years, Occu: Business,
R/o: Shivshankar Niwas,
Near Sonyacha Maroti Temple,
Sarafa Market, Nanded
- 1/4) Shilpa w/o Nilesh Mahajan
Age: 30 years, Occu: Household,
R/o: In front of Tirumala Cambridge Bus Stand,
Near Madhav Daal Milla, Degloor,
Taluka Degloor, District Nanded

... **Respondents**
(Original Plaintiffs)

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Mr. S. S. Gangakhedkar, Advocate for applicant
Mr. Arvind Deshmukh, Advocate for respondent No.1/1.

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CORAM : R. G. AVACHAT, J.

RESERVED ON : 26th OCTOBER, 2021

PRONOUNCED ON : 17th NOVEMBER, 2021

PER COURT :-

. This Civil Revision Application is directed against the judgment and order dated 09.08.2019, passed by the Extra Joint District Judge-1, Nanded, in Regular Civil Appeal No. 294 of 2012. By the impugned judgment and order, decree passed against the applicant – defendant for delivery of possession of a suit premises (shop block) has been confirmed. As such, it is a case of concurrent finding of facts.

2. Heard. Shri S. S. Gangakhedkar, learned Advocate for the applicant – defendant would submit that both the Courts below have erred in appreciating the evidence in proper perspective. Issue of comparative hardship has not been properly considered. The applicant – defendant did not have alternative accommodation. There was a proceeding pending before the Rent Controller under

Hyderabad Rent Control Act. A subsequent proceeding/suit for possession of suit premises under the Maharashtra Rent Control Act was therefore not maintainable. Before the First Appellate Court, additional evidence was produced to show the respondent landlord to have his own premises for the purpose for which the possession of suit premises was sought for. The plaint is conspicuously silent to disclose the plaintiff to have his own other premises. Learned Advocate has relied on the judgment of the Apex Court in the case of ***Badrinarayan Chunilal Bhutada v. Govindram Ramgopal Mundada – AIR 2003 SC 2713*** and specifically adverted this Court's attention to paras 7 and 8 thereof. The learned Advocate, ultimately urged for setting aside the impugned judgment and order.

3. Learned Advocate for the respondent landlord would, on the other hand, submit that the applicant has already vacated the suit premises. According to him, no interference is warranted with the concurrent findings of fact recorded by the Courts below.

4. Considered the submissions made by the learned Advocates. Perused the impugned judgment and order. Admittedly, the original plaintiff was the landlord. The father of the applicant

herein was the tenant in possession of the suit premises, the shop block. He would run a goldsmith shop therein. The landlord has two sons, Santosh and Sushil and a widowed daughter. The suit was filed for possession of the suit premises on the ground of reasonable and *bona-fide* requirement. The landlord proposed to open a jewellery shop in the suit premises. It is also his case that his son-in-law has passed away. His widowed daughter along with her children has now been staying with him. He is looking after them. The possession of the suit premises was also sought for on the ground of requirement of his daughter for business purpose. Both the Courts below have rightly held the plaintiff to have made out a case of reasonable and bona-fide requirement. The additional evidence produced in the First Appeal has rightly been appreciated by the Appellate Court observing that the landlord owned agricultural land and open site. It has specifically been averred in the plaint that the plaintiff do not have any shop owned and possessed for establishment of business of his son Sushil and daughter Shipla. The applicant – defendant did not lead any evidence to show the plaintiff to have his own vacant premises.

5. On the question of comparative hardship is concerned, both the Courts have observed the tenant to have admitted to have premises in the vicinity known as Chauphala in city of Nanded. The said premises was said to have belonged to his grand-mother. She is no more. The father of the original tenant and his brother have been in occupation of the said premises. The original tenant has also been residing therein. The said premises are centrally located and there are commercial premises around. As such, both the Courts below have rightly observed that no greater hardship would be caused by passing decree for possession of the suit premises. The findings are based on the evidence in the suit. The same cannot be termed to be perverted. As such, no case is made out for interference with the impugned judgment and order. In the result, the Revision Application fails, the same therefore stands dismissed.

6. Interim relief granted earlier to continue for further three weeks.

[R. G. AVACHAT, J.]

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