

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.201 OF 2019

Mohd. Shakil Noorhassan Kazi
(Wrongly typed in lower Court
judgment as – Mohd. Shaqeel
Nurhasan Kazi)

...APPLICANT
(Orig.Deft.No.5)

Versus

Jama Masjid Trust, Bhusawal,
through its Trustees
Mohd. Rafik Shaikh Mohd. & ors.

...RESPONDENTS
(No.1 to 7 Orig. Pltffs.
Nos.8 to 11 Orig.
Deft.No.1 to 4 Nos.8 to
11 formal party)

.....
Mr. G.R. Syed, Advocate for applicant
Mr. S.P. Brahme, Advocate for R.Nos.1 to 3, 5 & 7
.....

CORAM : R. G. AVACHAT, J.

DATE : 5th MARCH, 2021.

ORDER :

The challenge in this revision application is to the judgment and decree dated 6/9/2013, passed by Civil Judge, Junior Division, Bhusawal in Suit, Regular Civil Suit No.268/2012 and confirmed by judgment and decree dated 5/9/2019, passed by

District Judge-2, Bhusawal in Regular Civil Appeal No.659/2014. By the impugned judgment and decree, the applicant (original defendant No.5) and respondents No.8 to 11 (original defendants No.1 to 4) have been directed to vacate the suit premises. It was a suit for possession of the premises given on rent. The possession had been sought on the ground of bonafide requirement, default in payment of rent and subletting. The suit came to be decreed on all the counts. The appeal preferred thereagainst has been dismissed. Hence the present revision.

2. The respondent is Jama Masjid Trust, Bhusawal/ Wakf, through its trustees – respondents No.1 to 9. The suit property is a residential block consisting of two rooms. The respondent Trust/ Wakf claims to be the owner of the suit premises. It is its case that the suit premises were let out to one Bismillabi for her residence. On her demise, her son Abdul Aziz continued to occupy the suit premises as a tenant. He died in December 2011. The respondents No.8 to 11 (original defendants No.1 to 4) are his sons.

The rent of the suit premises has not been paid since the death of Abdul Aziz. The suit premises were required reasonably and bonafide for occupation of the respondent Trust. The original defendants No.1 to 4 have acquired suitable alternative accommodation. They have sublet the suit premises to the original defendant No.5 (applicant herein). The possession of the suit premises was, therefore, asked for.

3. The applicant and the respondents No.8 to 11 (defendants No.1 to 5) did not file their written statement. Witness examined on behalf of the respondents was not cross-examined. The trial Court, therefore, decreed the suit with the observations that the evidence let in on behalf of the respondent – plaintiff went unchallenged. The trial Court directed the defendants to vacate the suit premises within two months and pay the arrears of rent of Rs.216/-. The appeal preferred against the impugned judgment and decree has been dismissed on the ground that no case has been made out for remand of the suit with a view to give the appellants/ defendants an opportunity to

file the written statement and lead their evidence.

4. Mr. Syed, learned counsel for the applicant would submit that, the applicant is son-in-law of the original tenant. He has all along been residing in the suit premises since the lifetime of the original tenant. The applicant had been in employment at Ahmedabad (Gujarat State). He would visit Ahmedabad frequently. The rent of the suit premises was tendered to the respondent No.1. Its officials, however, refused to receive the same. On receipt of the suit summons, the defendants including the applicant appeared in the suit. The applicant engaged an Advocate to represent him in the suit. Other defendants engaged another Advocate. Since the applicant alone was residing in the suit premises, the respondents No.8 to 11 (defendants No.1 to 4) did not attend the proceedings of the suit. The learned Advocate representing the applicant was indisposed for years. He did not file the written statement nor did he inform the applicant progress of the suit. Later on, the Advocate representing the applicant passed away. The trial

Court decreed the suit without issuing the applicant notice of the proceedings. As such, it was an *exparte* decree, liable to be set aside with a view to give the applicant an opportunity to file the written statement and contest the suit. The learned counsel would further submit that, the appellate Court did not give due consideration to the applicant's aforesaid contention. He, therefore, urged for allowing the application and remand of the suit.

5. Mr. S.P. Brahme, learned counsel for the respondents No.1 to 7 would, on the other hand, submit that, the applicant and respondents No.8 to 11 were given sufficient opportunity to defend the suit. They, however, did not avail the opportunity. The suit premises are reasonably and bonafide required by the respondent No.1 for its own occupation. The learned counsel took me through the chronology of events in the suit to submit that the applicant and respondents No.8 to 11 were negligent. Their Advocate was very much on record. He has sought for time to file the written statement. The time was granted. The suit

was fixed for filing of written statement on 14/2/2013 and 16/3/2013. No written statement, however, could be filed. On 25/4/2013, lawyers of both the sides were present. Affidavit of examination-in-chief was filed. The matter was, therefore, adjourned for cross-examination of the witness of the respondent No.1. The learned counsel for the applicant remained absent on 18/6/2013. On further adjourned date, the time had been sought. According to learned counsel, the applicant and the respondents No.8 to 11 had full opportunity to file their written statement and contest the suit. Learned counsel would submit that, since they failed to do so for no valid reason, no interference is called for with the impugned judgment and decree.

6. It was a suit for possession of the suit premises given on rent for residential purpose. It has been averred in the application that the learned Advocate representing the respondent was indisposed for many a days. He later on passed away. Although the record of the suit indicates that on some occasions the learned Advocate representing the defendants/

applicant was present, there is nothing to suggest that he was really representing the interest of the applicant. If the learned Advocate was unable to proceed with the matter for one or the other reason, he ought to have informed his inability to the applicant, who could have made an alternative arrangement. The impugned decree has been passed exparte. It is a residential premise. It is a shelter of the applicant. The respondent is a Trust/ Wakf. It has other properties as well. Interest of justice demands that the impugned judgment and decree be set aside, remanding the suit to the trial Court with a direction to decide it within a time frame.

7. In the result, the revision application succeeds in terms of the following order :

8. Civil Revision Application is allowed in terms of prayer clause (B).

The suit is remanded back to the trial Court. Parties are directed to appear before the trial Court on or before 30th April 2021.

The applicant shall file his written statement within a period of four weeks from his appearance before the trial Court. The other defendants are also at liberty to file written statement/s within the aforesaid time-frame.

The trial Court is requested to decide the suit on its own merits within a period of twelve months from the date of receipt of a copy of this order.

The applicant to pay the respondent Trust Rs.10,000/- (Rupees ten thousand) towards costs.

(R. G. AVACHAT)
JUDGE

fmp/-