

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.3 OF 2019

- 1) Kamlesh Ramchandra Gaggad
Age 43 years, Occu. Business,
R/o Main Road, Chopda,
Taluka Chopda, District Jalgaon
- 2) Nilesh Ramchandra Gaggad
Age 39 years, Occu. Business,
R/o Main Road, Chopda,
Taluka Chopda, District Jalgaon ... **APPLICANTS**

VERSUS

Sunil Bhaskar Neve,
Deceased through L.Rs.

- 1) Sunita Sunil Neve
Age 50 years, Occu. Household
- 2) Swapnil Sunil Neve,
Age 34 years, Occu. Business
- 3) Ragini Sunil Neve,
Age 32 years, Occu. Household
- 4) Supriya Sunil Neve
Age 28 years, Occu. Household

All Respondents Nos.1 to 4
R/o Bhai Kotwal Road, Chopda,
Taluka Chopda, District Jalgaon ... **RESPONDENTS**

.....
Shri G.S. Rane, Advocate for applicants
Shri K.C. Sant, Advocate for respondents
.....

WITH

CIVIL REVISION APPLICATION NO.5 OF 2019

- 1) Kamlesh Ramchandra Gaggad
Age 43 years, Occu. Business,
R/o Main Road, Chopda,
Taluka Chopda, District Jalgaon
- 2) Nilesh Ramchandra Gaggad
Age 39 years, Occu. Business,
R/o Main Road, Chopda,
Taluka Chopda, District Jalgaon ... **APPLICANTS**

VERSUS

Prakash Ramkrishna Nemade
Age 50 years, Occu. Business,
Proprietor of Sanjay Pipes
R/o Main Road, Chopda,
Taluka Chopda, District Jalgaon ... **RESPONDENTS**

.....
Shri G.S. Rane, Advocate for applicants
Shri S.V. Kshirsagar, Advocate holding for
Shri A.S. Deshpande, Advocate for respondent
.....

CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 17th February, 2021

Date of pronouncing order : 10th June, 2021

J U D G M E N T :

Rule. Rule made returnable forthwith and taken up for final hearing with the consent of learned counsel for the parties.

2. Both these revision applications are being decided

by this common judgment since those are interconnected. By these revision applications, the applicants (plaintiffs) challenge the judgments and decree passed by the Court of Civil Judge, Junior Division, Chopda, District Jalgaon on 3/5/2016 in Regular Civil Suit Nos.69/2009 and 68/2009 respectively and affirmed by the Additional District Judge, Amalner vide judgments and orders dated 10/10/2018 in the Appeals, being Regular Civil Appeal Nos.24/2016 and 25/2016. By the impugned judgments and decrees, the claim of the plaintiffs for recovery of possession of the tenanted premises on the ground of default and bonafide requirement has been negated. The plaintiffs have, therefore, preferred these revision applications.

3. It is the case of the plaintiffs that, the premises bearing City Survey No.2723/A has been purchased by them under registered sale deed dated 27/6/2008. It is a two storey premises. There are three shop blocks on the ground floor. The upstairs premises have been occupied by the plaintiffs and their family members for their residence. Shop No.1 was vacant. Other two shops have been in possession of the respondents (tenants). On purchase of the entire premises, the plaintiffs issued the tenants notice of attornment dated 1/9/2008. Thereafter the plaintiffs issued

them notice asking for payment of arrears of rent. The plaintiffs also called upon the tenants to vacate the respective suit premises since those have been purchased for their business. Both the plaintiffs want to deal in insecticides and pesticides. Since no arrears of rent then due was paid and the premises were not vacated, two separate suits (Regular Civil Suit No.68/2009 and 69/2009) were filed against the respective tenants for eviction on the grounds stated hereinabove. Both the Courts negated the claim of the plaintiffs for the reasons that no sooner the demand notices were issued, the tenants have paid the arrears of rent and on their appearance in the suits, immediately deposited the rent then due, and continued to deposit the rent in Court, regularly.

4. On the question of reasonable and bonafide requirement of the suit premises, both the Courts have found that the plaintiffs have already started their business in the vacant shop. They did not, therefore, require the suit premises. The plaintiff No.2 did not step into the witness box nor has there been any evidence to indicate what kind of business he proposed to run. In view of both the Courts, when the plaintiffs failed to make out a case of bonafide requirement, the issue of hardship takes a back seat. The

plaintiffs also failed to prove that the tenants would not suffer greater hardship.

5. Heard Shri G.S. Rane, learned counsel for the plaintiffs. Also heard Shri K.C. Sant and Shri S.V. Kshirsagar, learned counsel representing the respective tenants.

The learned counsel Shri Rane would submit that, the findings recorded by both the Courts are glaringly inconsistent with the legal propositions. He would submit that, both the tenants did not deposit 15% interest on the amount of arrears of rent. The learned counsel also brought to my notice some details to indicate the tenants have not been regular in making payment of the rent during pendency of the suit and appeal as well. He placed reliance on the Full Bench judgment of this Court in case of **Babulal s/o Fakirchand Agrawal Vs. Suresh Kedarnath Malpani & ors.** [2017 (4) Mh.L.J. 406]. On the question of bonafide requirement, the learned counsel would submit that, it was not necessary to examine both the plaintiffs. Requirement on the date of the suit should have been considered. He took me through the relevant findings and related legal propositions to ultimately submit that interference in exercise of revisional jurisdiction is required for setting aside the impugned

judgments and the decrees.

6. Both the learned counsel for the tenants would, on the other hand, submit that there are jurisdictional limitations on the powers of this Court to interfere with the findings of facts recorded by both the Courts. They meant to say that, in exercise of revisional jurisdiction, this Court cannot upset even wrong findings of facts. Both the learned counsel took me through the respective evidence to submit that, no sooner the demand notices were issued, the tenants had remitted the rent by money orders. Since the tenants were not in arrears of the rent on the date of the suit, the landlords have not asked for money decree regarding rent amount. Pending the suit before the trial Court and in appeal as well the tenants have regularly deposited the amounts of rent.

On the issue of bona fide requirement, both the learned counsel relied on the reasons given by both the Courts to non-suit the applicants/ plaintiffs. The learned counsel have placed reliance on the following authorities :

- (1) Chevalier I.I. Iyyappan & anr. Vs.
The Dharmodayam Co., Trichur [AIR 1966 SC 1017]
- (2) Raghunath G. Panhale (Dead) by L.Rs. Vs.
M/s Sundarji and Co. [AIR 1999 SC 3864]

- (3) Madhukar Laxman Umalkar Vs.
Keshao Laxman Shilawant [2005(3) Mh.L.J. 947]
- (4) Shree Krishna Trading Company, Nagpur Vs.
Arvind Wamanrao Nagpurkar [2009 (6) Mh.L.J. 255]
- (5) Wamanrao Vyankatrao Shinde, Since deceased through
L.Rs. Shreedhar Wamanrao Shinde & ors. Vs.
Munnibai wd/o Parmanand Jain, Since deceased through
L.Rs. Gyanchand s/o Parmanand Jain & ors.
[2015(5) Mh.L.J. 891]

7. I have considered the rival submissions. In case of **Masjid Kacha Tanki, Nahan Vs. Tuffail Mohammed [AIR 1991 SC 455]**, it has been held by the Hon'ble Supreme Court:-

“Civil P.C. (1908), S. 115 – Concurrent finding of lower Courts – Reappreciation of evidence and interference with findings by High Court – Can be only in case findings of facts are perverse or there has been non-application of mind.”

In case of **Lachhman Dass Vs. Santosh Singh [1995 AIR SCW 2766]**, it has been held by the Hon'ble Supreme Court:-

“From the use of the expression “Legality or propriety of such order or proceedings” occurring in S.15(4), it can be said that no doubt the revisional power of the High Court under the Act is wider than the power under Section 115 C.P.C. which is confined to jurisdiction, but it is also not so wide as to embrace within its fold all the

attributes and characteristics of an appeal and disturb a concurrent finding of fact properly arrived at without recording a finding that such conclusions are perverse or based on no evidence or based on a superficial and perfunctory approach. If the High Court proceeds to interfere with such concurrent findings of fact ignoring the aforementioned well recognised principles, it would amount to equating the revisional powers of the high Court as powers of a regular appeal frustrating the fine distinction between an appeal and a revision. That being so unless the High Court comes to the conclusion that the concurrent findings recorded by the two Courts below are wholly perverse and erroneous which manifestly appear to be unjust there should be no interference.”

8. Let us take first the ground of default. It is apposite to reproduce Section 15 of the Maharashtra Rent Control Act, 1999 (Rent Act for short).

“15. No ejectment ordinarily to be made if tenant pays or is ready and willing to pay standard rent and permitted increases. (1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the, standard rent and permitted increases, if any, and observes and performs the other, conditions of the tenancy, in so far as they are consistent with the provisions of this Act. (2) No suit for recovery of possession shall be instituted by a landlord against the tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of ninety days next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in section 106 of the Transfer of

Property Act, 1882. (3) No decree for eviction shall be passed by the court in any suit for recovery of possession on the ground of arrears of standard rent and permitted increases if, within a period of ninety days from the date of service of the summons of the suit, the tenant pays or tenders in court the standard rent and permitted increases then due together with simple interest on the amount of arrears at fifteen per cent per annum; and thereafter continues to pay or tenders in court regularly such standard rent and permitted increases till the suit is finally decided and also pays cost of the suit as directed by the court. (4) Pending the disposal of any suit, the court may, out of any amount paid or tendered by the tenant, pay to the landlord such amount towards the payment of rent or permitted increases due to him as the court thinks fit.

9. The Full Bench of this Court, in Babulal's case (supra), has held :

“On the analysis of the provisions of Section 15 as well as various judgments, it must be concluded that the provisions of sub-section (1), (2) and (3) of Section 15 shall be read independently. In order to claim relief against forfeiture, the tenant must satisfy all the conditions in respect of payment of rent or tender in Court all the arrears then due on the first day of hearing of the suit or within contemplation of provisions of law and to deposit the rental liability regularly in the Court till the suit is finally decided and there is no extinction of the cause of action by reason of payment of existing arrears by the tenant. It is, thus, clear that in order to avoid decree, once the notice is issued within contemplation of sub-section (2) of Section 15 of the Maharashtra Rent Control Act by the landlord,

the tenant shall have to fulfil the conditions laid down under sub-section (3) of Section 15 of the Maharashtra Rent Control Act and there is no escape therefrom.”

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10. Admittedly, the landlords purchased the premises under a registered sale deed dated 27/6/2008. Both the tenants have thereafter been served with notices of attornment. With subsequent notices dated 23/2/2009, the tenants were called upon to pay the arrears of rent for the period 27/6/2008 to 23/3/2009. The tenant, therefore, sent a sum of Rs.6000/- by money order (Rs.500/- per month) for the period from 27/6/2008 to 20/6/2009). The landlords accepted the same. The Trial Court has observed that the tenants could be taken to have complied with the mandate of Section 15(2) of the Rent Act. It also observed the tenant to have deposited a sum of Rs.6000/- in the Court towards rent for the period 1/7/2009 to 30/6/2010. The suit is filed on 18/12/2009. The appellate Court reiterated the reasons given by the Trial Court.

11. Undisputedly, on receipt of attornment notice, the tenants on their own did not offer the plaintiffs each month's rent. The landlords had, therefore, to issue demand notice.

In response thereto, the tenants remitted the rent amount by money orders. So far as regards the tenant in C.R.A. No.3/2019 is concerned, there is no evidence on record to indicate that after payment of Rs.6000/- through money order in response to the demand notice, he (tenant) sent further money orders towards the rent due for the period next before institution of the suit and landlords have refused to receive the same. It is true that the landlords have not prayed for money decree on account of arrears of rent. The claim for possession on the ground of non-payment of rent and claim for arrears of rent are two different reliefs based on the same cause of action. The plaintiff may waive/ give up the monetary claim. (Order II Rule 2 of the Civil Procedure Code). On receipt of the suit summons, the tenants admittedly deposited a sum of Rs.6000/- in the Court. The same indicates the tenant was in arrears of that much amount due on the date of the suit. The said amount had not been deposited along with 15% interest thereon. The same is the non-compliance of mandate of Section 15(3) of the Rent Act. During the appeal, a sum of Rs.3000/- was paid by the tenant on 13/12/2016 towards rent for the period July 2016 to December 2016. Equal amount was paid on 11/4/2017 for the period January 2017 to June 2017. The same indicates

that the tenant had not been regular in making payment of the rent pending the suit and appeal as well.

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12. Vide notice dated 23/2/2009, the tenant was called upon to pay the arrears of rent for the period 27/6/2008 to 23/3/2009. The tenant, therefore, sent a sum of Rs.3600/- by money order. The landlords accepted the same. The Trial Court has observed that the tenants could be taken to have complied with the mandate of Section 15(2) of the Rent Act. It also observed the tenant to have deposited a sum of Rs.4800/- in the Court towards rent for the period 1/7/2009 to 30/6/2010. The suit has been filed on 18/12/2009. The appellate Court reiterated the reasons given by the Trial Court.

13. Undisputedly, on receipt of attornment notice, the tenant on his own did not offer the plaintiffs each month's rent. The landlords had, therefore, to issue demand notice. In response thereto, the tenant remitted the rent amount by money orders. On receipt of the suit summons, the tenant admittedly deposited in Court a sum of Rs.4800/-. The same indicates him to have been in arrears of rent due on the date of the suit. The said amount was not deposited with 15%

interest thereon. The same is the non-compliance of mandate of Section 15(3) of the Act.

During pendency of the suit and appeal as well, the tenant deposited some amount. The details thereof are as below :-

During Suit :-

- (1) Rs.2400/- for period 1.1.2011 to 30.6.2011 deposited on 22.2.2011.
- (2) Rs.2400/- for the period 1.7.2011 to 31.12.2011 deposited on 10.8.2011.
- (3) Rs.2400/- for the period 1.7.2013 to 31.12.2013 deposited on 21.8.2013.
- (4) Rs.2400/- for the period 1.1.2014 to 30.6.2014 deposited on 3.3.2014.
- (5) Rs.2400/- for the period 30.6.2014 to 31.12.2014 deposited on 10.9.2014.
- (6) Rs.2400/- for the period 1.1.2015 to 30.6.2015 deposited on 20.4.2015.
- (7) Rs.2400/- for the period 30.6.2015 to 31.12.2015 deposited on 3.8.2015.

During Appeal :-

(8) Rs.2400/- for the period 30.6.2016 to 31.12.2016 deposited on 20.9.2016.

(9) Rs.2400/- for the period 11.1.2017 to 30.6.2017 deposited on 14.3.2017.

(10) Rs.2400/- for the period 1.7.2017 to 31.12.2017 deposited on 19.9.2017.

(11) Rs.2400/- for the period January 2018 to June 2018 deposited on 27.2.2018.

14. The aforesaid details have not been traversed. As such, there is clear non-compliance of mandate of Section 15 (2) and (3) of the Rent Act. The findings recorded by both the Courts are thus grossly inconsistent with the legal propositions as has been emerged in view of the Full Bench judgment in Babulal's case (supra). In exercise of revisional jurisdiction, the findings recorded by both the Courts being perverse, are, therefore, liable to be set aside.

Bonafide requirement :-

15. Section 16 of the Maharashtra Rent Control Act reads as under :

“16. When landlord may recover possession :-

(1) Notwithstanding anything contained in Act subject to the provisions of Section 25, a landlord shall be entitled to recover possession of any premises if the Court is satisfied :-

(g) that the premises are reasonably and bona fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held or where the landlord is a trustee of a public charitable trust that the premises are required for occupation for the purposes of the trust; or”

16. Section 16(2) reads thus :-

“(2) No decree for eviction shall be passed on the ground specified in clause (g) of subsection (1), if the court is satisfied that, having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant, greater hardship would be caused by passing the decree than by refusing to pass it.”

17. Section 18(1) reads thus :

“18. Recovery of possession for occupation etc. and re-entry.

(1) Where a decree for eviction has been passed by the court on the ground specified in clause (g) of sub-section (1) of section 16, and the premises are not occupied within a period of one month from the date the landlord recovers possession or the premises are re-let within one year of the said date to any person other than the original tenant, the court may, on the application of the original tenant made within thirteen months from such date, order

the landlord to place him in occupation of the premises, on the terms and conditions existing on the date of passing of the decree for eviction and, on such order being made, the landlord and any person who may be in occupation of the premises shall give vacant possession to the original tenant.”

18. It is specifically averred in the plaint that the plaintiffs purchased the premises for their residence and business purpose. It has also been averred in the plaint that the plaintiffs were educated unemployed. They originally hail from the State of Madhya Pradesh. The plaintiffs are the brothers and they wanted to set up their independent business. It has also been averred that, the plaintiffs raised a loan of Rs.10,00,000/- from the Pachora Peoples Bank for business purpose. Both the plaintiffs and the defendants gave their oral evidence, reiterating the averments in their respective pleadings.

19. One of the plaintiffs gave his evidence on affidavit. The plaintiff No.2 did not enter the witness box. Both the Courts below held that there was no evidence to prove the exact nature of the business the plaintiff No.2 was doing. It has also observed that the plaintiffs have already commenced a business in insecticide in the Shop Block No.1. The requirement has thus been fulfilled. It also found that,

without there being a pleading, the plaintiffs testified to have required the premises for storage of goods (insecticides). It also found the plaintiffs to have been using some other premises as a godown. The Courts went on to observe that, the plaintiffs failed to prove the defendants to have an alternative premises to run their business.

20. In my considered view, the aforesaid observations are perverse and, therefore, liable to be set aside in exercise of revisional jurisdiction.

21. The landlord is the best judge of his own requirement. Neither the Courts nor the tenant can dictate the landlord how and in what way he should use his premises. It has been specifically averred in the plaint that the premises were purchased for residence and business purpose. Admittedly, the upstairs premises have been occupied by the plaintiffs and their family members for their residence. Requirement of the premises is to be seen as on the date of the suit. Landlord is not expected to sit idle until he gets possession of the premises on eviction of a tenant. It was, therefore, but natural for the plaintiffs to commence their business in the shop block that was very much available. The same indicates their requirement was genuine. Admittedly,

the plaintiffs have been storing the goods (insecticides and pesticides) in the premises belonging to some other person. The same reinforces the plaintiffs' claim to be reasonable and bonafide. Requirement of premises for storage of goods is an integral part of doing a business. For such requirement, in my view, there need not be a specific pleading. It would be suffice to mention that the plaintiffs require the premises for the business purpose.

22. The burden of proof that greater hardship would be caused by passing the decree than refusing to pass, lies on the tenants. There was no shred of evidence to indicate the tenants/ defendants to have made any efforts to secure any alternative premises. Town – Chopda is not like a city of Pune, Nasik or Mumbai. Both the tenants/ defendants have been doing their business in the respective suit premises for over 30 years. They did not produce any evidence to show their financial inability to secure an alternative premise. As such, the defendants/ tenants failed to discharge their burden of proof regarding issue of greater hardship. Section 18 of the Rent Act is there to take care of the situation if the landlord after having obtained possession of the premises re-lets it to someone else or sells. It is reiterated that the findings recorded by both the Courts are perverse and,

therefore, liable to be set aside.

23. For the reasons given hereinabove, both the revision applications are allowed in terms of prayer clauses (A) and (B). The respondents are directed to vacate the respective premises (shop blocks) within a period of six months from today. Rule made absolute in above terms.

**(R. G. AVACHAT)
JUDGE**

fmp/-