

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

CIVIL REVISION APPLICATION NO.5 OF 2021

Vijay Vishnupant Karekar	..Applicant
V/s.	
Ranjeet Ratnakar Karekar	..Respondent

Mr.PD. Dalvi for the Applicant.

Mr.Surel Shah a/w Mr.Yogesh Morable and Mr.Shantanu S. Kalekar
for the Respondent.

CORAM : C.V. BHADANG, J.

RESERVED ON : 04th FEBRUARY 2021

PRONOUNCED ON : 09th APRIL 2021

P.C.

1. The challenge in this revision application, is to the Judgment and order dated 17th October 2020, passed by the learned Adhoc District Judge at Kolhapur in RCA no 39/2015. By the impugned Judgment, the learned District Judge while dismissing the appeal filed by the applicant, has confirmed the Judgment and Decree dated 6th January 2015 passed by the learned Civil Judge Junior Division Kolhapur, directing eviction of the applicant from the suit premises.

2. A ground plus two storied building standing on CTS no 46 B Kolhapur, was purchased by the respondent under sale deed dated 23rd July 1999 from one Wankudre. The said building is situated in an area better known as 'Gujari' which is a commercial locality mostly having Jewellery Shops. The applicant is in possession of the Ground and the second floor of the building as a tenant, since prior to its purchase by the respondent. The said tenanted portion happens to to be the subject matter of dispute herein.

3. According to the respondent the applicant is aware of the purchase of the building since the year 1999 and has become the tenant of the respondent in respect of the said portion from the date of the purchase. However the applicant had failed to pay the monthly rent of Rs.100/- pm and has become a defaulter within the meaning of the Maharashtra Rent Control Act, 1999 (Act for Short). It was also contended that the Rent of Rs.100/- p.m. is grossly inadequate and the present market rent of similar premises in the locality is Rs 15000/- p.m. The respondent claims that the building is more than sixty years old and has become dilapidated and dangerous for occupation. The municipal Corporation is insisting for demolition of the building. The respondent is a Goldsmith and

intends to start his own Jewellery business. The respondent cannot use the first floor of the building for the said purpose as the building has become dilapidated. It is also contended that the stair case leading to the second floor (which is in possession of the applicant) passes through the portion in possession of the respondent on the first floor. Thus looking to the safety and security also the first floor cannot be used to start the business of Jewellery Shop. The respondent has no other premises for starting the business while the applicant has alternate premises where he can shift his business. The applicant is avoiding to vacate the tenanted premises or to pay the rent although has assured to do so. The respondent issued a notice to the applicant terminating the tenancy and seeking possession and claiming arrears of rent from 1st August 1999 to 30th June 2009. The applicant failed to comply with the same. It is in these circumstances that the respondent filed RCS no 887/2009 before the Learned Civil Judge Junior Division at Kolhapur, for eviction and possession on the aforesaid grounds and for arrears of rent etc.

4. The suit was resisted by the applicant. It was contended that the premises are in good habitable condition. The respondent never intimated about the purchase of the premises to the applicant. The applicant learnt about the same in the year 2000. The applicant

sent a notice along with Rent @ Rs 15.05ps pm which is the fair rent which the respondent refused to accept. It was contended that the said fair rent was fixed in case no 395/1962 between the father of the applicant and the previous owner/landlord. Thus the respondent cannot demand and is not entitled to Claim Rent @ 150/-pm. The first floor of the building is enclosed and the respondent got it vacated from the tenant one Shri.Pise. The respondent is having his business at a near by locality on the Jotiba Road. Thus the respondent does not need the premises as claimed. It was denied that the building is in dilapidated condition as alleged.

5. On the basis of the rival pleadings the learned trial Court framed as may as five issues. (The original issues were framed in English. However the learned trial court has translated them as the judgment was delivered in vernacular).

6. The parties led oral and documentary evidence. The learned trial court by a judgment and order dated Decreed the suit on the ground of *bona fide* requirement. Feeling aggrieved the applicant challenged the same before the learned District Judge in RCA No.39 of 2015 in which the respondent raised a counter claim to the extent of the adverse findings against Issue Nos.1,2 and 4

pertaining to arrears of rent, termination of tenancy and recovery of Rs.15,000/-.

7. The learned District Judge by a judgment and decree dated 17th October 2020 has dismissed the appeal as well as the counter claim. This is how the applicant is before this Court.

8. I have heard the learned counsel for the parties. Perused record.

9. It is submitted by the learned counsel for the applicant that the respondent is having his business in a nearby locality at Jotiba Road. It is submitted that the respondent also got vacated the first floor of the building from the tenant Mr.Pise and that portion is in possession of the respondent. It is submitted that the first floor which is in possession of the respondent is properly enclosed and is under the lock and key of the respondent. It is submitted that thus the respondent has enough space and premises for starting his business if any. The learned counsel pointed out that the respondent has not disclosed about the properties which are in his possession including the ancestral property. It is submitted that the respondents have not come with clean hands and claim of the

respondent lacks *bona fides*. For the said purpose reliance is placed on the decision of this Court in ***Vasant Mahadeo Gujar V/s. Baitulla Ismail Shaikh & Anr.***¹, in order to submit that, where the claim of the landlord, lacks reasonability and *bona fides*, he is not entitle to any relief. Particular reliance is placed on the observations in paragraph 54 of the judgment in ***Vasant Mahadeo Gujar (Supra)***. It is submitted that, the applicant is not having any other premises and thus even on the considerations of comparative hardship it is the applicant who would suffer more hardship if the eviction is ordered as prayed.

10. The learned counsel has taken me through the evidence and the order passed by the Courts below, in order to submit that the Courts below have not properly appreciated the claim of the respondent for eviction on the ground of personal occupation, in the context of the evidence on record.

11. Mr.Shah, the learned counsel for the respondent has supported the impugned judgment. It is submitted that the applicant has failed to produce any evidence, to show that the respondent was running his business at Jotiba Road as alleged. It is

1 2016(4) ALL MR 174

submitted that other premises are ancestral in nature. It is submitted that the premises on the first floor are neither sufficient nor suitable for the purpose of business as a jewellery shop. It is submitted that the Courts below after properly appreciating the oral and documentary evidence on record have granted a decree for eviction, on the ground of reasonable and bonafide occupation and that finding of fact properly recorded, does not call for interference, in the revisional jurisdiction. The learned counsel pointed out that the *bona fide* requirement of the landlord has to be considered in a reasonable manner on the genuineness of the requirement, which is not on par with a “dire need” as held by this Court in ***Madhukar Punjaram Sonawane and Anr V/s. Gajanan Vithal Khandekar***². Further reliance is placed on the decision in the case of ***Sidharam Ganpati Mulage & Ors. V/s. Bashir Elahibksh Tamboli & Ors.***³, in order to submit that the applicant has failed to plead and prove that inspite of his best efforts it was not possible for him to get other premises in the same locality. It is submitted that in such circumstances, this Court, in the case of *Sidharam Ganpati Mulage & Ors (Supra)* has refused to interfere with the finding of fact recorded by the Courts below. He therefore submitted that the application be dismissed.

2 2009(2) Mh.L.J. 694

3 2009(3) Mh.L.J. 907

12. I have considered the circumstances and the submissions made. The eviction was sought on three grounds namely arrears of rent, *bona fide* personal occupation and building being in a dilapidated and inhabitable condition. Both the Courts below have refused to uphold the ground of arrears of rent. Insofar as the ground based on the building being in a dilapidated condition is concerned, paragraph 15 of the judgment of the Appellate Court would show that the said ground was not pressed, as it was submitted that evidence on record in that regard “be ignored”. Thus the only ground which survives for consideration and on the basis of which the decree of eviction is granted is that the premises are reasonably and *bona fide* required by the landlord for occupation by himself, within the meaning of Section 16(1)(g) of the Rent Act. It is an admitted position that the applicant is occupying the ground floor and the second floor of the building, while the first floor which was got vacated from tenant Mr.Pise, is in possession of the respondent. The applicant came with a case that the respondent was doing business on Jotiba Road. However the Appellate Court has found that the said property on the Jotiba Road has been purchased by the father of the respondent in the name of the brother of the respondent. The Appellate Court has found that the applicant had admitted that he has not produced any document to

show that the respondent was doing business at Jotiba Road. In that view of the matter the contention that the respondent is having alternate premises, where he was carrying on business, has not been accepted.

13. It is necessary to note that during the pendency of the appeal, the applicant filed application Exhibit-22 for amendment of the written statement by introduction of Para 12A to bring on record the ancestral properties of the respondent and his brothers. In support of the said contention the applicant filed three applications Exhibit-23,38 and 43 under Order XLI Rule 27 of the C.P.C. for production of additional evidence at the Appellate stage. The record discloses that the amendment application (Exh.22) was allowed on 15th January 2018 and the three applications for additional evidence were allowed on 16th July 2018. Both these orders were challenged before this Court in Writ Petition No.8543 of 2018. The said Petition was decided on 1st October 2018, by which the order below application Exhibit-22 for amendment was modified and consequently the order dated 16th July 2018 below application Exhibit-23 under Order XLI Rule 27 of the C.P.C. was set aside. This was to be extent of the pleadings and the documents sought to be

introduced/produced showing the purchase of the properties by the parents of the respondent and his Money Lending business.

14. It is true that the learned District Judge in paragraph 26 of the judgment has observed that by implication even the order below application Exhibit 38 and 43 is also to be considered to be set aside which may not be strictly correct. This is because the judgment and order dated 01st October 2018 would show that it only pertains to the modification of the order below Exhibit-22 and setting aside of the order below Exhibit-23. However, this observation by the learned District Judge may not have bearing on the ultimate outcome of the appeal, inasmuch as on facts the learned District Judge has found that none of the documents sought to be produced vide Exhibit-38 and 43, stand in the name of the respondent. It is not shown that any of such documents which were sought to be produced were indeed in respect of the properties standing exclusively in the name of the respondent.

15. It is now well settled that the *bona fide* and reasonable requirement of the landlord is not to be equated with a 'dire need' as held by this Court in *Madhukar Sonawane (Supra)*. It is also well settled that the landlord is the best judge of his requirement and in

the absence of his claim being found to be fanciful or unreasonable, it is not for the Court to assess the nature of the need.

16. Even so far as the reliance placed on the decision of this Court in *Vasant Gujar* is concerned the said case clearly turned on its own facts. Whether the claim of the landlord is *bona fide* or not or whether the landlord has disclosed the properties which are available to be occupied would depend upon the facts and circumstances of the each case.

17. In the case of *Vasant Gujar* on facts it was found that the respondent landlord had not at all been candid with the Court, insofar as the pleadings are concerned. The Court found that during the course of the evidence, it had come on record that the respondent-landlord besides the suit premises, had several other premises, which were being used by him for the purposes of commerce as well as residence. Although this Court has found that some of such premises, may have been acquired post the institution of the suit, nevertheless, there was no disclosures volunteered in the course of the examination-in-chief. It was specifically found that even if, the premises subsequently acquired are left out of consideration, there was a duty cast upon the landlord to fully and

candidly make disclosure about the premises in his occupation, both for the purposes of the residence as well as commerce and thereafter to explain about the subsistence of the need in respect of the suit premises. The Court found that the landlord had completely failed in this aspect.

18. Coming to the present case the applicant has failed to show that respondent was having any premises where he could carry out his business. It is necessary to note that it is not in dispute that the respondent is also a goldsmith by profession.

19. Coming to the issue of comparative hardship this Court in the case of *Sidharam Ganpati Mulage* has held that the tenant must plead and prove that inspite of his best efforts it was not possible to get any other premises in the same locality. The perusal of the evidence on record would show that the applicant has failed to show that inspite of efforts, he was unable to find any suitable alternate premises in the same locality. Thus the issue of comparative hardship has rightly been answered against the applicant.

20. I have carefully gone through the impugned judgment of the Courts below and I do not find that they suffer from any infirmity so as to require interference in the revisional jurisdiction of this Court. The revision application is without any merit, and is accordingly dismissed with no order as to costs.

C.V. BHADANG, J.