

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

**CIVIL REVISION APPLICATION NO. 24 OF 2010
WITH
CIVIL APPLICATION NO. 4449 OF 2011
WITH
CIVIL APPLICATION NO. 3698 OF 2012**

Kantadevi Bankatlal Mundada
(Since deceased, Through L.Rs.)

- 1-A. Bankatlal Sitaramji Mundada
Age: 93 years, Occu.: Nil,
R/o Nanal Peth, Parbhani
- 1-B. Shriniwas Bankatlalji Mundada
Age: 50 years, Occu.: Advocate,
R/o As above
- 1-C. Shobha Shriballabh Randad
Age: 60 years, Occu.: Household,
R/o C-8, Green Field Society,
Shiv Teerth Nagar, Paud Road,
Pune
- 1-D. Vidya Ashwinikumar Manihar
Age: 58 years, Occu.: Household,
R/o "Amar Shanti", Nr. Lala Building,
Avdhootwadi, Yawatmal
- 1-E. Manju Gokul Rathi
Age: 55 years, Occu.: Household,
R/o Flat No. 401, Rohan Kritika,
Nr. P.L. Deshpande Garden,
Sinhagad Road, Pune
- 1-F. Dr. Meenakshi Suresh Chandak
Age: 51 years, Occu.: Medical Practitioner,
R/o 103, Arihant Apartments,
JMNC Campus, Jawahar Nagar,
Sawangi (Meghe), Wardha

1-G. Sangeeta Manish Jhamwar,
Age: 49 years, Occu.: Architect,
R/o 4106 Hansen Ave,
Fremont CA, USA 94536

..APPLICANTS

VERSUS

M/s Empire General Agencies,
Through its Partner
Sunilkumar Lekhraj Khairajani
Age: 48 years, Occu.: Business,
R/o Station Road, Parbhani

..RESPONDENT

....
Mr. S.S. Rathi, Advocate for applicants
Mr. M.M. Bhokarika, Advocate for respondent
....

CORAM : R.G. AVACHAT, J.
RESERVED ON : 23rd AUGUST, 2022
PRONOUNCED ON : 15th DECEMBER, 2022

JUDGMENT (PER : R.G. AVACHAT, J.) :

1. This is original plaintiff's revision application taking exception to the judgment and decree dated 11th November, 2008 passed by the Court of Civil Judge Senior Judge, Parbhani in Regular Civil Suit No. 178 of 2004 and confirmed by the District Judge-2, Parbhani vide judgment and decree dated 28th October, 2009 in Regular Civil Appeal No. 143 of 2008.

2. It was a suit for possession of the premises, particularly described in paragraph no.1 of the plaint, on the grounds of default in payment of rent, permanent construction without written consent of the landlord and bonafide

requirement. The plaintiff failed on all the three counts before both the Courts below.

For the sake of convenience, the parties are referred to as landlord (Kantadevi Mundada) and tenant (M/s Empire General Agencies) respectively.

3. The facts giving rise to the present revision application are as follows:-

The suit premise are the shop block, admeasuring 419 sq. feet. A house property bearing Municipal House No.10 admesaruig 2700 sq. feet belongs to the landlord. The suit premises are one of the parts of the said house property. The landlord had given on lease the entire house property to her daughter – Minakshi. The lease was for a period from 01st April, 1988 to 31st December, 2001. Minakshi was authorised to sub-let the entire house property. She, therefore, inducted the tenant (a partnership firm) in the suit premises, at a monthly rent. On lease period having come to an end, Minakshi surrendered possession, factually and constructively as well, of the entire leased property to the landlord.

4. A son of the landlord is a practicing advocate. He practices on civil and criminal side in the District Court, Parbhani. His father is a tax practitioner. The landlord called upon the tenant to vacate the suit premises. Possession of the suit premises was asked for the landlord's son to operate his

profession (advocacy) therefrom. It is also the case of the landlord that the tenant committed default in payment of rent and made a permanent construction in the nature of opening of a door as an access to the tenant's adjoining premises.

5. Admittedly, no notice under Section 15(2) of the Maharashtra Rent Control Act, 1999 ('Rent Act') was issued to the tenant calling upon him to pay the arrears of rent. The suit on the ground of default in payment of rent, is therefore, not maintainable. As regards the ground of permanent construction is concerned, there was a clause in the agreement of lease between Minakshi and tenant, authorising the tenant to open a door in one of the walls of the suit premises so as to have an access to the tenant's adjoining premises. As such, the landlord has rightly been non-suited by both the Courts. Both these grounds of eviction could, therefore, not be looked into in this revision application.

6. On the ground of reasonable and bonafide requirement of the suit premises, the trial Court observed that two shop blocks were let-out, one to a safari tailor and one to Shree Medical. Those two tenants gave vacant possession of those two shop blocks to the landlord. Those two shop blocks were again let-out to Purna Sahakari Bank in the year 1998. The bank has also surrendered possession thereof in 2006. The landlord's son can very

well do his profession from the said premises. It, therefore, held that the landlord did not reasonably and bonafidely require the suit premises. The trial Court also answered the issue as to greater hardship in favour of the tenant. The appellate Court confirmed the findings recorded by the trial Court on the issue of reasonable and bonafide requirement. It however, upset the findings of the trial Court on the issue of greater hardship.

7. Learned counsel for the applicant would submit that the findings recorded by both the Courts below are perverse and this Court, therefore, in exercise of revisional jurisdiction can interfere therewith. He would submit that the landlord is the best judge of his own requirement. A tenant cannot dictate the landlord in what manner he shall use his premises. The tenant - partnership firm and its partners are financially well off. They have their own premises just adjoining the suit premises. Learned counsel took this Court through the entire evidence on record to ultimately urge for setting aside the impugned decree.

8. Learned counsel for the tenant would, on the other hand, submit that in exercise of revisional jurisdiction, no concurrent findings of facts could be upset. According to him, there was no perversity in the findings recorded by both the Courts. There was ample evidence to indicate the landlord to have kept her other premises vacant. Learned counsel too referred to the

entire evidence on record to ultimately urge for dismissal of the revision application. He has relied on the following authorities :-

(i) Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh, AIR 2014 SC 3708

“Civil P.C. (5 of 1908), S.115 – Revision – Rent control matters – High Court cannot exercise its power as an appellate power to re-appreciate or re-assess evidence.”

(ii) Shaikh Jaffar Shaikh Mahmood Vs. Mohd. Pasha Hakkano Saheb, AIR 1975 SC 794

“Hyderabad Houses (Rent, Eviction and Lease) Control Act (20 of 1954), S.26(c) – Power of High Court in revision under section – It is narrower than in appeal and is similar to one under Section 115, Civil P.C. - High Court commits error in reappreciating evidence.”

(iii) Vasant Mahadeo Gujar Vs. Baitulla Ismail Shaikh, CRA No.770 of 2013 dt. 04th August, 2015 (Bom.H.C.)

“Maharashtra Rent Control Act, 1900, Section 16(1)(g) – Eviction – Ground of bona fide requirement – From the material on record, it appears that landlords have in their occupation several properties and carry on several business – These facts were suppressed by landlords in their plaints seeking eviction on ground of bona fide requirement – It was duty of landlords to make disclosure of said facts in their pleadings – In absence of such disclosures on vital and relevant matters, no decree of eviction under Section 16(1)(g) can be granted.”

9. Both, the landlord and the tenant have preferred civil applications for production of additional documentary evidence to bring on record subsequent events. None of them has however, urged for amendment of their respective pleadings first. Neither of them even urged for remand of the matter for appreciation of the additional evidence sought to be produced.

This Court is of the view that the additional evidence proposed to be let in could not be referred to in revision application without there being foundation in the pleadings. Moreso, neither the landlord nor the tenant gave consent to read each other's proposed additional evidence. The revision application, therefore, has to be decided only on the basis of evidence produced before the trial Court.

10. There can be no two views over what has been observed by the Constitution Bench of the Hon'ble Supreme Court in case of Hindustan Petroleum Corporation Ltd. (supra). The question is whether the findings recorded by both the Courts below are perverse. In case of ***Masjid Kacha Tank, Nahan Vs. Tuffail Mohammed, AIR 1991 SC 455***, the Apex Court has observed the following points :-

“Civil P.C. (5 of 1908), S.115 – Concurrent finding of lower Courts – Re-appreciation 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 - ...”

11. Admittedly, the entire house property belongs to the landlord. Her husband is a tax consultant. He has his own premises to carry on his profession. In paragraph nos. 7 and 9 of the plaint it has been observed thus:-

“7. That, plaintiff is having a son, who is an Advocate and he wants to have an independent office to carry on his profession as Advocate & particularly the suit premises is in the near vicinity

of Court premises and other offices which will facilitate the son of the plaintiff to continue with the practice & particularly there is no scope in the residential house of the plaintiff to have an independent office to carry on the profession in the civil as well as criminal sides as the husband of the plaintiff is exclusively practicing in Sales Tax and Income-Tax & therefore, there is no scope nor there are premises by virtue of which the son of the plaintiff can carry on his profession as an Advocate, and there is no other premises which are available as well as suitable for the profession of the son of the plaintiff. It is submitted that, plaintiff is having only one son and he wants to establish his own office in the suit premises, and therefore, it is a bonafide need of the plaintiff to evict the defendant and recover the possession of the suit premises.

9. That, plaintiff further submits that, there is no inconvenience to the defendant if he shifts his business on the western portion of his own premises & handover the possession of the suit premises to the plaintiff. It is more inconvenience, unjust if the possession of the suit premises is not handed over to the plaintiff, because the son of the plaintiff is not having an independent office of his own and there are no other premises in Parbhani city belonging either to the plaintiff or her son, and therefore, the ends of justice requires that, the suit premises are necessary for the purposes of the bonafide need of the plaintiff.”

12. Legal position is now well settled. The landlord is a best judge of his own requirement. The tenant cannot dictate a landlord in what way or manner he shall make use of his own premises. Section 18(1) of the Rent Act

is there to take care of a tenant. For better appreciation, the said provision is reproduced below :-

“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.”

13. Admittedly, son of the appellant is a practicing advocate. The suit premises are in the nearby of the District and Sessions Court, Parbhani. There is nothing in the evidence to show that the landlord's son was doing his profession from some other premises independently. It was the tenant's case that he was doing his profession in the premises of his father, who is a tax consultant. It is also a settled proposition of law that requirement of the suit premises is to be seen on the date of institution of the suit. True, there may be subsequent events to suggest the requirement no longer subsists. It is also true that two shop blocks admeasuring 319 sq. feet forming part of the house

property were in occupation of Purna Sahakari Bank. The bank surrendered the possession of the said premises in 2006. It is a subsequent event. The landlord in her evidence has testified that since the premises vacated by the bank were not suitable and convenient for his son, he is not making use of the same. It was in her evidence that her son desires to do his profession in the suit premises. His intention cannot be doubted. The fact is that the entire house property exclusively belonged to the landlord. Her son did not have right, title and interest therein. Although the landlord has only son, the record indicates that the landlord passed away pending this application. All her legal representatives have come on record. They are seven in number, including an advocate son. The legal representatives are none other than Class I heirs of the deceased – landlord. Her advocate son, therefore, now cannot claim right, title and interest in the entire property. The premises that were surrendered by the bank may go to the share of any of the legal representatives of the landlord.

14. Reliance on the judgment of Vasant Mahadeo Gujar (supra) would be of no avail to the tenant since the bank surrendered possession of the shop blocks pending the suit. It was not that the landlord had vacant premises in her possession on the date of the suit and still she asked for possession of the suit premises on the ground of bonafide requirement. In view of this Court, both the Courts below ignored the settled legal position that the landlord is

the best judge of his own requirement. It also ignored the provisions of Section 18(1) of the Rent Act. On the date of institution of the suit, the landlord did not have any other vacant premises for the purpose for which the possessions of the suit premises were asked for. In view of this Court, the findings recorded by both the Courts below, negating claim of the landlord, are grossly inconsistent with the evidence on record and as such perverse.

15. Admittedly, the tenant is a partnership firm. The partners thereof are none other than the members of one and the same family. One of the said members, who is representing the tenant – partnership firm, in his oral evidence admitted in no uncertain terms that to the west of the suit premises, he has own premises admeasuring 1,000 sq. ft. The said premises have a frontage, opening on the station road. The witnesses examined on behalf of the tenant also admitted that the tenant is financially well off. Both, the brothers (partners) and their father operate Empire Electrical Store situated at Gandhi Park. The tenant has his own premises (residential) in a locality wherein there are number of commercial establishments. The said premises have a frontage opening on the road. Admittedly, the tenant did not make any efforts to find out alternative premises in case he was required to vacate the suit premises. The appellate Court has thus, rightly held that greater hardship would have been caused to the plaintiff – owner by passing the decree than refusing to pass it.

16. For all the aforesaid reasons, this Court is of the view that the findings recorded by both the Courts below are inconsistent with the evidence on record. The same are, therefore, perverse. Interference in exercise of revisional jurisdiction has, therefore, warranted. In the result, revision application succeeds. Hence the following order :-

ORDER

- (I) Civil revision application is allowed.
- (II) Impugned order dated 11th November, 2008 passed by the Court of Civil Judge Senior Judge, Parbhani in Regular Civil Suit No. 178 of 2004 dismissing the landlord's suit is hereby set aside. The suit stands decreed.
- (III) The tenant shall handover vacant possession of the suit premises in favour of the landlord within a period of six months from the date of this order.
- (IV) Pending civil applications, if any, shall stand disposed of accordingly.

(R.G. AVACHAT, J.)

SSD