

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

CIVIL REVISION APPLICATION NO.20 OF 2022

1. Shantilal s/o Champalal Khivansara
Deceased, through L.Rs.
- 1-A) Sow. Teejabai w/o Shantilal Khivansara
Deceased, through L.Rs.
- 1-A-i) Kiran w/o Vinod Kunkulol @
Kiran d/o Shantilal Khivansara
Age 52 years, Occu. Household,
r/o Dhashmeshnagar, Aurangabad.
- 1-A-ii) Kanchan w/o Prassanna Badera @
Kanchan d/o Shantilal Khivansara,
Age 51 years, Occu. Household,
R/o Post Office Road, Hingoli
- 1-A-iii) Pushpa w/o Sundrendra Lunawat @
Pushpa d/o Shantilal Khivansara
R/o Near Ganpati Mandir,
Besides Mahavir Bhavan, Yawatmal
- 1-A-iv) Seema w/o Anand Bamb @
Seema d/o Shantilal Khivansara
R/o Samarth Housing Society,
Sathana, Tq. Malegaon, Dist. Nashik
- 1-A-v) Deepak s/o Shantilal Khivansara,
R/o Flat No.101, Apollo Trade Centre,
Supari Hanuman Road, Aurangabad
- 1-A-vi) Rakhi w/o Pramod Mutha @
Rakhi d/o Shantilal Khivansara,
R/o Prakash Electrics, Main Road,
Rahuti, Dist. Ahmednagar
- 1-B) Shri Deepak s/o Shantilal Khivansara,
Age 46 years, Occu. Business
R/o Flat No.101, Apollo Trade Center,
Supari Hanuman Road, Aurangabad.

- 2) Suresh s/o Lalchand Khivansara,
Age 63 years, Occu. Private Service
R/o Kachewada, Chelipura,
Aurangabad. ... APPLICANTS

VERSUS

- 1) Suresh s/o Manakchand Chhajang
Age 58 years, Occu. Business,
2) Rajesh s/o Manakchand Chhajang,
Age 55 years, Occu. Business,
3) Naresh s/o Manakchand Chhajang,
Age 53 years, Occu. Business
4) Jayesh s/o Manakchand Chhajang,
Age 50 years, Occu. Business,
All R/o Keli Bazar, Aurangabad ... RESPONDENTS

.....
Mr. A.S. Bajaj, Advocate for applicants
Mr. P.F. Patni, Advocate for respondents
.....

CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 14th September, 2022

Date of pronouncing judgment : 10th November, 2022

JUDGMENT :

The challenge in this revision application is to a judgment and decree dated 2/3/2017, passed by I/c 3rd Jt. Civil Judge (Junior Division), Aurangabad in Regular Civil Suit No.18/2014 and the judgment and decree dated 20/10/2021,

passed by District Judge-6, Aurangabad in Rent Appeal No.4/2017, confirming the judgment and decree passed in Regular Civil Suit No.18/2014. The applicants are the original defendants in the suit. The respondents are the plaintiffs. It was a suit for recovery of arrears of rent and possession of suit premises on the ground of default and bonafide requirement, in terms of provisions of the Maharashtra Rent Control Act, 1999 (for short the Rent Act). The trial Court decreed the suit on both the grounds. The appellate Court has confirmed the same. Hence the present revision application.

2. Heard. Shri A.S. Bajaj, learned counsel for the applicants/ tenants would submit that, the impugned judgments and decree are inconsistent with the evidence in the suit. The same are, therefore, perverse and liable to be set aside in exercise of revisional jurisdiction. On the issue of default, the learned counsel would submit that, the suit premises were let out at a monthly rent of Rs.175/-. An agreement was also executed. A sum of Rs.2001/- was paid to the original landlord Manakchand as deposit. The rent came to be enhanced to Rs.200/- w.e.f. 1/10/1987. The quantum of rent amount remained unchanged till date. It was only on the request of the original landlord the applicants paid

him Rs.400/- per month as he was in financial difficulty. On the demise of the original landlord, the applicants have regularly paid the rent to one of the respondents, namely Suresh. He, however, did not issue any rent receipts on the ground that names of the legal representatives of original landlord Manakchand have not been recorded in the Municipal/ City Survey record. According to learned counsel, on receipt of statutory demand notice, it was duly replied. On receipt of the suit summons, the applicants have deposited all the arrears of rent, under protest. According to learned counsel, both the trial Court and the first appellate Court have ignored all these facts and even disregarded admission given by the plaintiff in that regard.

3. On the question of reasonable and bonafide requirement, the learned counsel would submit that, the respondents/ plaintiffs did not come with clean hands. They did not disclose in the plaint availability of their number of premises. The applicants have produced additional evidence in appeal to suggest the respondents/ plaintiffs to have ample premises with them to cater their needs. Details thereof has been given in a tabular form before this Court. He would further submit that, one of the applicants is physically disabled (suffering from acute Rheumatics Arthritis).

Business run in the suit premises is the only source of income for him. If we compare the premises available with the respondent/ landlord with that of the applicants' physical and financial status, it would be evident that, greater hardship would be caused by passing the decree than refusing to pass it. The learned counsel has relied on the following set of authorities to ultimately urge for allowing the revision application :

- (1) Central Tobacco Co., Bangalore Vs. Chandra Prakash (1969) RCJ 702 : (1969) RCR(Rent) 579
- (2) Narendra Gulabrao Zade Vs. Shiocharan Ghanshiram Gupta, since deceased through L.Rs. Smt. Radhabai Shivcharan Gupta & anr. [2011(1) Mh.L.J. 839]
- (3) Deena Nath Vs. Pooran Lal [(2001) 5 SCC 705]
- (4) Gulabbai Vs. Nalin Narsi Vohra & ors. (1991) 3 SCC 483
- (5) S.P. Chengal Varaya Naidu (Dead) by L.Rs. Vs. Jagannath (Dead) by L.Rs. & ors. [(1994) 1 SCC 1
- (6) Tarachand Hassaram Shamdasani Vs. Durgashankar G. Shroff [(2004) Supp BCR 333]
- (7) Muddasani Venkata Narsaiah (Dead) through L.Rs. Vs. Muddasani Sarojana [(2016) 12 SCC 288

4. Learned counsel for the respondents/ plaintiffs would, on the other hand, submit that, revisional jurisdiction of this Court to interfere with the concurrent findings of fact

recorded by both the trial Court and the first appellate Court is very limited. According to him, the findings recorded by both the Courts is very much consistent with the evidence in the suit. Learned counsel for the respondents/ plaintiffs placed reliance on the following authorities :-

- (1) Rafiq Ahmed Qureshi s/o Bashir Ahmed Vs. Iqbal Khan s/o Hashmat Ali Khan and ors. (2012 (1) Mh.L.J. 337
- (2) Babulal s/o Fakirchand Agrawal Vs. Suresh s/o Kedarnath Malpani & ors. [2017(4) Mh.L.J. 406]
- (3) Prabhakar Venkobaji Manekar Vs. Surendra Dinanath Sharma [2015(4) Mh.L.J. 351]
- (4) Ataullahkhan s/o Mohammadkhan (Dead) through Legal Heirs Azarullakhan s/o Ataullahkhan and others Vs. Kernath Jaywantrao Nagargoje [2019(2) Mh.L.J. 471]
- (5) Shila Ramchandra Sachdeva Vs. Vinod Harchamal Santani [2017(6) Mh.L.UJ. 396]

The learned counsel for the respondents took this Court through the relevant evidence and then relied on a Full Bench judgment of this Court in case of Babulal s/o Fakirchand Agrawal (supra) to ultimately submit for dismissal of the revision application.

5. Considered the submissions advanced. Perused the evidence relied on. Gone through the authorities placed on record.

6. **Scope of revisional jurisdiction :**

A Constitution Bench of the Hon'ble Supreme Court, in case of **Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh [AIR 2014 SC 3708]**, has observed :-

“Rent Control Act does not entitle the High Court to interfere with the findings of fact recorded by the First Appellate Court/ First Appellate Authority because on re-appreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/ Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to

a different finding on facts. Revisional power is not and cannot be equated with the power of re-consideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.”

7. The suit premises admeasures 133 sq.ft. It has been used for commercial purpose. It was originally owned by Manakchand Chhajad. He had inducted the defendants in the suit premises as tenants, way back in June 1974. The evidence on record indicates that, initially the rent was Rs.175/-. The applicants admit the same to have been increased to Rs.200/- per month w.e.f. 1987. The question is, whether the monthly rent of the suit premises was Rs.400/-. The applicants admit to have had paid the original landlord a sum of Rs.400/- per month for over years since the original landlord had some economic problem and he requested to pay that much amount. Both the Courts below have found the said contention of the applicants to have been unsupported by any cogent and reliable evidence. The trial Court has rightly observed that, the respondents/ plaintiffs were financially well off. When the applicants have been paying the landlord a sum of Rs.400/- per month for number of years, both the Courts below have rightly drawn a legitimate inference that it was a

quantum of rent and not otherwise. The amount @ Rs.400/- per month was paid from 1/4/1996. Rent receipts (Exhs.75 to 81) vouch for the same.

8. According to the respondents/ plaintiffs, the applicants were in arrears of rent from 1/11/2006 to 30/6/2014. A statutory demand notice was therefore, issued, calling upon them to clear the arrears of rent. Instead of remitting the rent by money order or by any other mode, the applicants replied the notice, claiming to have had paid the rent in cash every month. The Courts below have rightly observed that both, the applicants and the respondents were businessmen. Until April 2006, the rent receipts were issued. The applicants, except their bare contention of having paid the rent in cash, did not lead any evidence in support of the same. The trial Court has observed that, the applicants could have placed on record their books of accounts of the business run in the suit premises to indicate the payment of rent. The applicants being businessmen, could have sent the rent by money order or any other recognised mode which could have been available for them as evidence of payment of rent. Both the Courts below have, therefore, rightly observed the applicants to have not tendered the arrears of rent on receipt of a statutory demand notice. It is true that, on receipt of

suit summons, the applicants have deposited with the Court a sum of Rs.39,200/- towards rent @ Rs.400/- per month for a period from 1/11/2006 to 31/12/2014. Section 15 of the Rent Act reads as under :

15.(1) 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, insofar 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.”

Sub-clause (3) of Section 15 mandates a tenant either to tender to the landlord or deposit in Court all the arrears of rent then due along with 15% interest thereon. A tenant is also expected to continue to pay or tender in Court regularly such standard rent or permitted increases till the suit is finally decided.

9. Admittedly, the applicants have not at all paid to the respondents/ plaintiffs or deposited with Court 15% interest on the arrears of rent. The Courts below have also observed the applicants to have not continued to pay or tendered in Court regularly each month's rent pending the suit. It is a finding of fact recorded on the basis of evidence in the case. What has been placed on record is the details as to rent receipts issued by the respondents/ plaintiffs for the period from 1979 up to July 2002. The same would not be of any avail to the applicants herein. In case of Babulal Agrawal (supra), the Full Bench of this Court has observed :-

“Eviction proceedings on ground of arrears of rent – Protection from eviction – In order to claim relief against forfeiture, tenant must satisfy all conditions in respect of payment of rent or tender in Court all arrears then due on first day of hearing of suit or within contemplation of provisions of law and to deposit rental liability regularly in Court till suit is finally decided – In order to avoid decree, once notice is issued within contemplation of sub-section (2) of Section 15 of Maharashtra Rent Control Act by landlord, tenant shall have to fulfill conditions laid down under sub-section (3) of Section 15 of Maharashtra Rent Control Act and there is no escape therefrom. 1984 Mh.L.J. 313, Overruled and 2013(1) Mh.L.J. 28, affirmed.”

10. Since the evidence on record undoubtedly indicates the applicants to have not complied with the mandate of Section 15 of the Rent Act, the trial Court has rightly decreed the suit for possession on the ground of default. The appellate Court committed no error in confirming the decree passed by the trial Court. This Court, in exercise of revisional jurisdiction, does not find any scope to interfere therewith.

Bonafide requirement :

11. The possession of the suit premises was also asked for on the ground of reasonable and bonafide requirement. The averments to that effect find place in

paragraph No.5 of the plaint. For better appreciation, the pleadings in paragraph No.5 of the plaint are reproduced below :-

“5. That, the plaintiffs are the real brothers interse. They are running the business in adjoining shop leased to defendants. The business which they are running is not sufficient to accommodate to all four brothers, so they have taken one additional shop at Machlikhadam area where plaintiff No.2 Rajesh is running the business. Now remaining 3 brothers and sons of the plaintiff Nos.1 to 3 are grown up. Due to increase in family members the premises where the plaintiffs are running business is not sufficient and also the sons of plaintiff Nos.1 to 3 became major and premises where they are running the business is insufficient to accommodate all the brothers and sons. As such, the premises in possession of defendants are reasonably and bonafidely required by the plaintiffs for their occupation for running their business. The suit shop is just adjacent where the plaintiffs are carrying on their business. If they get eviction of the defendants, their need to some extent will be satisfied.”

12. The claim of the respondents/ plaintiffs was sought to be countered on the ground that, they have not averred in the plaint availability of other premises. The learned counsel, relying on the aforesaid authorities, namely **Tarachand Hassaram Shamdasani Vs. Durgashankar G. Shroff** (supra), would submit that, the respondents have not come

with clean hands. They were, therefore, liable to be non-suited on this count alone. Attention of this Court was adverted to the additional evidence that was produced in appeal. The learned counsel placed on record a chart indicating the number of premises with measurements thereof, available with the respondents/ plaintiffs. There is no dispute regarding the same. It is true that, the respondents/ plaintiffs are financially well off. Each one is a proprietor of a different business. Pending the suit, they have constructed huge complex comprising commercial and residential premises. The area in their occupation would be more than 4000 sq.ft. The applicants, on the other hand, possess only 132 sq.ft. area of the shop premises. Since both the applicants could not find the business run in the suit premises sufficient to make their both the ends meet, one of them had joined the service.

13. The first appellate Court has given a well-reasoned judgment to address the contentions raised by the learned counsel for the applicants before it. What has been submitted before this Court was reiteration thereof. The respondents/ plaintiffs have, in the plaint, specifically averred to have taken additional shop at Macchali Khadak area. Premises at Pan-Dariba area was in the nature of an open plot. The

respondents/ plaintiffs were not expected to make mention thereof in the plaint. The said plot has been developed pending the suit. The suit premises are required for expansion of their business, which is being run in their shop adjoining to the suit premises. It would, therefore, not be reasonable and logical as well to contend that the respondents can very well expand their business in a premises located at Pan- Dariba or Machhali Khadak area. The respondents are four in number. Their children have now grown up. Some of them have got married. Their wives are stated to be well educated. It is reiterated that, they belong to business community. The genuineness of the requirement, therefore, cannot be doubted. It is reiterated that, the landlord is the best judge of his own requirement.

14. On the question of greater hardship is concerned, admittedly, the applicants did not make any effort to search for an alternative premises. Admittedly, number of commercial premises have come up in the nearby of suit premises. Relying on the judgment of the Apex Court in case of Bega Begum and ors. Vs. Abdul Ahad Khan (Dead) by L.Rs. And ors. [AIR 1979 SC 272], the trial Court has rightly observed that, inaction on the part of the applicants as regards making a search for alternative premises would run

against their interest.

15. In view of this Court, the findings recorded by both the Courts below on the issue of bonafide requirement and greater hardship are concerned, are consistent with the evidence on record. The same could not be termed to be perverse entailing interference therewith by this Court in exercise of revisional jurisdiction. As such, the revision application fails. The same is dismissed.

(R. G. AVACHAT, J.)

16. On the request of learned counsel for the applicants, the applicants are granted six months time to vacate the suit premises. The applicants are directed to furnish an undertaking-cum-affidavit to the effect that no third party interest would be created in relation to the suit premises and they would vacate the same within the time frame. The applicants shall clear all the arrears of rent.

(R. G. AVACHAT, J.)

fmp/-