

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

CIVIL REVISION APPLICATION NO. 22 OF 2022

Sujata Bharatkumar Motiwala

..APPLICANT

VERSUS

Dinkar Vyanktesh Koranne

..RESPONDENT

....
Mr. P.N. Sonpethkar, Advocate for applicant
Mr. R.J. Godbole, Advocate for respondent
....

**CORAM : R.G. AVACHAT, J.
DATE : 18th AUGUST, 2022**

PER COURT :

1. Heard.

2. The challenge in this revision application is to a judgment and decree dated 18th September, 2021 passed by the Joint Civil Judge, Senior Division (11th Court), Aurangabad in Rent Control Suit No. 4 of 2017 and confirmed by the Court of learned District Judge-14, Aurangabad vide judgment and decree dated 19th January, 2022 passed in Rent Appeal No. 2 of 2021. The applicant herein is a tenant in possession of the suit premises, whereas the respondent is the landlord. By the impugned judgment and decree, the applicant is directed to vacate the suit premises. The grounds on which the decree has been passed are reasonable and bonafide requirement and default in payment of rent.

3. Mr. Sonpethkar, learned counsel for the applicant would submit that the suit and appeal came to be decided with an electrifying speed. The applicant is a woman. She had not been keeping well. It was a pandemic of corona virus. She, therefore, could not appear before the trial Court to contest the suit.

4. On the ground of eviction, the learned counsel would submit that the trial Court and the appellate Court as well, have not answered the issue of comparative hardship. The appellate Court even did not frame point in that regard. According to learned counsel, the respondent – landlord has one another premises to stay in, at Aurangabad itself. If the impugned judgment and decree is confirmed, the applicant would be on the street. Learned counsel urged for setting aside the impugned judgment and decree and remand of the suit with direction to the trial Court to decide it afresh. Learned counsel was agreeable to make it time bound. He has relied on some authorities, reference thereof would be made later on.

5. Learned counsel for the respondent – landlord would, on the other hand, submit that the landlord is little over eighty-five years of age. For want of premises to stay in, he is residing at the house of his son-in-law. He would submit that when the applicant - tenant did not lead any evidence inspite of opportunities having been offered, there would, therefore, be no question of

addressing issue of comparative hardship. Learned counsel meant to say that there was no evidence led by the applicant – tenant to compare with that of the evidence produced by the respondent – landlord. According to learned counsel, the cheque issued by the applicant – tenant, in response to the appellate Court’s direction to pay all the arrears of rent, was dishonored for insufficiency of funds. According to learned counsel, the scope of revisional jurisdiction is very limited. Concurrent findings of fact recorded by both the trial Court and the appellate Court as well, are not liable to be interfered with.

6. Considered the submissions advanced. Perused the impugned judgment. Gone through the evidence on record. The respondent – landlord is little over eighty-five years of age. His wife passed away in 2015. The suit premises was originally owned by his wife. On her demise, the respondent inherited the same. It is a two room premise, used for residential purpose. The applicant was inducted therein as a tenant, initially in October 2013 for a period of eleven months. She had agreed to pay rent of Rs.10,000/- per month and bear all the incidental expenses. Lease came to be renewed for further eleven months with an increase in rent.

7. The suit was first decreed in April 2018. The applicant – tenant had preferred an appeal against the judgment and decree dated 26th April,

2018. It was Rent Appeal No. 4 of 2019. The appellate Court allowed the appeal remanding the suit back to the trial Court with a direction to decide the same in time frame. The applicant was also directed to pay monthly rent regularly. The applicant – tenant had filed her written statement. The trial Court took the suit for hearing. The applicant – tenant, inspite of having been given number of opportunities, did not appear to contest the suit. It was a case of June 2019 and some months thereafter corona pandemic commenced in March 2020. The trial Court again decreed the suit on both the grounds. The applicant preferred an appeal taking exception to the judgment and decree dated 18th September, 2021. The appellate Court confirmed the same. This Court would have considered the prayer for remand of the suit for giving the applicant – tenant an opportunity to lead evidence, but for the ground of default.

8. Learned counsel for the applicant first relied on the judgment of the Apex Court in ***Kishanlal Laxminarayan Karava Vs. Shalinibai*** reported in ***AIR 1991 SC 335***, wherein it has been observed in paragraph no.4 as under :-

“4. Section 13(2) of the Act is a provision which mandates the Court before passing the decree for eviction on ground of bonafide requirement specified in Clause (g) of Sub-section (1) to take into account all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant and whether greater hardship could be caused by passing the decree than by refusing to pass it. The

availability of accommodation for the tenant to be examined by the Court, in our view, is wide enough to include another premises being made available to the tenant by the landlord himself. We fail to see how such a course as was adopted by the District Judge in the instant case was not permissible. It appears that the Appellate Court without finally determining the comparative hardship straightway ventured to decide in asking the parties to exchange the premises in their respective possessions. The High Court based its decision only on one ground regarding which we have recorded our disapproval. Still the matter would have to be examined further as on whom would work greater hardship and in the absence of a clear finding in this regard, remand would be necessitated to the District Judge, Satara, the Appellate Court, for reconsideration of the matter. Accordingly, we allow this appeal, set aside the judgment and order of the High Court and remit the case back to the District Judge, Satara, confining the remittal to the question of comparative hardship. He is expected to decide this question within three months from the date of the receipt of this order as the litigation is very old and must come to an end quickly. Parties are left to bear their own costs.”

He then relied on following two judgments of this Court observing therein as under :-

(i) ***Suresh D. Zamakade Vs. Narayandas V. Shah and Others*** reported in ***2003 (2) BomCR 830***

“5. At the outset, I have no hesitation in observing that the manner in which the appeal has been disposed of is wholly unsatisfactory and unacceptable by any standards. On reading the

impugned judgment, the impression gathered is that the learned Judge has summed up the entire controversy in a cryptic way. What is interesting to note is that in para No. 13, the Appellate Court has adverted to all the 23 decisions cited across the bar on both sides without even briefly indicating the relevance of those decisions or that he was guided by the principle in any particular decision; and, concluded that the issue of reasonable and bona fide requirement will have to be answered against the petitioner and in favour of the respondents. Be that as it may, what is still surprising to note is that the Appellate Court has not even thought it appropriate to frame much less decide the issue of comparative hardship which it was obliged to do in view of the mandate of section 13(2) of the Act as it was inclined to grant decree for possession of the suit premises in favour of the respondents on the ground of reasonable and bona fide requirement. Suffice it to mention that the decision of the Appellate Court which is subject matter of challenge before this Court cannot stand the test of judicial scrutiny.”

(ii) ***Jain Supari Center and Another Vs. Rameshlal Motilal Hasoriya*** in ***Writ Petition No. 3134 of 2022*** dated 27th July, 2022

“19. In the present case, although this Court is satisfied about the findings rendered against the petitioners on the question of bonafide need under Section 16(1)(g) of the said Act (Maharashtra Rent Control Act, 1999), it needs to be examined whether the exercise expected to be carried out under Section 16(2) of the said Act was indeed undertaken by the Court below or not.”

9. It needs no mention that making out a case for eviction of a tenant on one or more of the grounds contained in Sections 15 and 16 of the Maharashtra Rent Control Act, 1999, is a question of fact. When the applicant did not lead any evidence to make out a case that greater hardship would be caused by passing a decree than refusing to pass it, both the Courts below were justified in not making observations in that regard in so many words. It is reiterated that this Court would have remanded the suit, but no submissions have been advanced on the issue of default in arrears of rent. Admittedly, the cheque issued by the applicant towards payment of arrears of rent, got dishonored for want of funds in the account. Nothing has been shown to this Court towards compliance of Section 15(3) of the Maharashtra Rent Control Act, 1999.

10. The Full Bench of this Court in case of ***Babulal Agrawal Vs. Suresh Malpani and Others*** reported in ***(2017) 4 Mh.L.J. 406*** has observed thus :-

(a) *Maharashtra Rent Control Act, 1999 (18 of 2000), S.15 and Bombay Rents, Hotel and lodging House Rates Control Act (5 of 1947), S.12 – 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.

11. Since the trial Court had passed the decree on both the grounds and the appellate Court has confirmed the same, this Court finds no scope to interfere with the impugned judgment and decree. In the result, the revision application fails. Learned counsel for the applicant urged for grant of six month's time to vacate the premises.

12. For the reasons given hereinabove, the revision application stands dismissed. As per the request, time of six months, from the date of this order, is given to the applicant for vacating the suit premises on condition of her furnishing an undertaking to that effect before the trial/executive Court.

(R.G. AVACHAT, J.)

SSD