

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 25 OF 2022

Awez Khan s/o Alam Khan
Age: 58 years, Occ: Business,
R/o. House No. 4-10-74/2,
Roshan Gate, Aurangabad

... **Applicant**
(Orig. Defendant)

Versus

- 1] Mohd. Kamaluddin Mohd. Jalaluddin
Age: 55 years, Occu. Service,
R/o. Nagsen Colony, Aurangabad
- 2] Mohd. Aleemuddin S/o Mohd. Jalaluddin
Age: 49 years, Occu. Business,
R/o. As above
(both through: Power of Attorney holder)
Mohd. Zainulabuddin Mohd. Jalaluddin
Age: 63 years, Occu. Business,
R/o. Nagsen Colony, Aurangabad

... **Respondents**
(Orig. plaintiffs)

....
Mr. M. K. Deshpande, Advocate for applicant
Mr. Mahesh R. Sonawane for respondent No.1
....

CORAM : R. G. AVACHAT, J.

DATED : 04th AUGUST, 2022

PER COURT :-

. Heard.

2. This is tenant's revision application. The challenge in this revision application is to the judgment and decree dated 03.05.2019, passed by the Court of learned 2nd Joint Civil Judge, Junior Division, Aurangabad in Rent Suit No.12 of 2014 and affirmed/confirmed by the Court of learned District Judge-4, Aurangabad in Rent Appeal No.7 of 2019.

3. The applicant herein is a tenant. The respondents are the landlords. The suit premises admeasurs 10 x 15 sq.ft. The premises are used for business purpose i.e. for running a medicine shop.

4. Both the Courts below have held the plaintiffs to have proved that they required the suit premises reasonably and *bona-fide* for running of a hotel. On the issue of hardship, both the Courts have found that no greater hardship would be caused by passing a decree than refusing to pass it. As such, it is a case of concurrent findings of fact.

5. The learned Advocate read out the judgment of the trial Court and that of the appellate Court. He would submit that the provisions of Section 16 (1)(g) are to be read along with Section

16(2) of the Maharashtra Rent Control Act (for short, 'Rent Act'). Both, the trial Court and the appellate Court did not consider as to whether a partial eviction decree could have been passed. For that purpose, the matter requires to be remanded back to the trial Court. The learned Advocate would further submit that at and around the vicinity wherein the suit premises are situated there are number of hospitals. If the applicant was required to vacate the premises, it would be a case of greater hardship. He would further submit that the landlords have in their possession the premises admeasuring more than 3000 square feet. They have also some other premises at Aurangabad. In support of his contentions, the learned Advocate has placed reliance on the following authorities:

- (i) *Rehman Jeo Wangnoo vs. Ram Chanu – 1977 DGLS (SC) 344;*
- (ii) *Ram Narain Arora vs. Asha Rani – 1998 DGLS (SC) 835.*
- (iii) *Badrinarayan Chunilal Bhutada vs. Govindram Ramgopal Mundada – (2003) 2 SCC 320;*
- (iv) *Manhar Auto Stores, Amravati and others vs. Kalpesh Hemantbhai Shah – 2010(3) Mh.L.J. 331;*
- (v) *Gyanchand s/o Parmanand Jain and others vs. Wamanrao s/o Vyankatrao Shinde – 2010(6) Mh.L.J. 561;*

6. On the question of two shop blocks owned and possessed by the applicant's wife are concerned, he would submit that she was doing her independent business. She had raised a loan from money launder for purchase of those shop blocks. Those are not available for the applicant to make use as of right.

7. Considered the submissions advanced. It is a case of concurrent findings of fact. On going through the judgment passed by the trial Court and confirmed by the first appellate Court, this Court does not find both the Courts below to have acted in exercise of its jurisdiction illegally or with material irregularity.

8. The suit was filed by two brothers. One of them has three sons, while the other has two. The plaintiffs want to expand their existing hotel business. The trial Court has rightly observed that the requirement of the plaintiffs cannot be doubted. Needless to mention the plaintiffs are the best judge of their own requirement. If at all, the plaintiffs do not make use of the premises after having got possession thereof, there is provision in terms of Section 17 of the Rent Act, which enables a tenant to apply to the Court to put him back into possession of the suit premises.

9. On the question of comparative hardship is concerned, the trial Court has rightly observed that on filing of the suit, the applicant/tenant did not make any efforts to make a search for alternative premises. Needless to mention, the burden of proof to prove that greater hardship would be caused by passing the decree is on the tenant. Here is the case wherein the wife of the applicant has two shop blocks. It is not the case of the applicant that his wife is not a member of his family or there is marital discord. The wife has not been examined in the suit. The suit premises admeasures only 150 square feet. Before the trial Court or even the first Appellate Court, the applicant does not appear to have urged for passing of decree for possession of a part of the premises. In view of this Court, the same is not feasible. In view of the dimensions/measurement of the suit premises and the fact that the same are required for running of hotel.

10. I have perused the citations relied on. It needs no mention that *bona-fide* requirement and comparative hardship are both the questions of fact. The trial Court and the appellate Court have held the landlords to have made out their case of *bona-fide* requirement. The same is based on the evidence obtainable in the case.

11. In exercise of revisional jurisdiction, this Court finds no reason to interfere with the impugned judgment and decree. The revision application, thus fails. The same is dismissed.

12. In view of dismissal of the revision application, Civil Application No. 6851 of 2022 is disposed of.

13. The statement made by the learned Advocate for the respondents to continue for the next six weeks.

[R. G. AVACHAT, J.]

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