

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

CIVIL REVISION APPLICATION NO.80 OF 2021

Sanjay Vijaykumar Darakh,
Age 47 years, Occ. Business,
R/o. Bunglow No. 25, Cantonment,
Aurangabad

... **Petitioner.**
(Orig. Defendant)

VERSUS

Mohammed Shukur s/o Sk. Chand,
Age 52 years, Occ. Business,
R/o. Kotwalpura, panchakki Road,
Aurangabad

... **Respondents.**
(Orig. Plaintiff)

...

Advocate for the Petitioner : Mr. M. G. Mustafa.
Advocate for the Respondent : Mr. S.S. Kazi.

CORAM : MANGESH S. PATIL, J.

RESERVED ON : 31.03.2022.

PRONOUNCED ON : 05.04.2022.

JUDGMENT :

Heard learned advocates of both the sides finally with consent.

2. By way of this revision under Section 115 of the Code of Civil Procedure the petitioner who is the original defendant is challenging the judgment and decree passed by the trial court in a suit filed by the respondent, for his eviction on the ground of reasonable and *bona fide* requirement for personal use and occupation of the demised premises as contemplated under Section 16(1)(g) of the Maharashtra Rent Control Act, 1999 (hereinafter 'the Act'), as also the judgment and order of the lower appellate court dismissing his appeal preferred under Section 34 of the Act.

3. The demised premises is a shop admeasuring 20 feet x 10 feet which

has been in possession of the petitioner since the year 1999 when one Aseer Khan was the owner. The respondent purchased it on 13.06.2012. The petitioner has been running a medical and general store in the demised premises. Averring that it was needed for the use and occupation of his son Shahabaj to run a similar business as he was a diploma holder in pharmacy but was an unemployed, the respondent filed the suit for eviction.

4. The petitioner opposed the suit. He admitted about being in possession of the demised premises on rent since before it was purchased by the respondent. He denied that the respondent needed it to run a pharmacy. It was contended that in fact the son of the respondent was already running a pharmacy across the road in another premises. The need that was put forth was not reasonable and *bona fide*. He further contended that he was not getting any alternate shop in the locality and therefore he would be put to greater hardship if evicted from the demised premises than that would be faced by the respondent, if he was not evicted.

5. Based on such pleadings the trial court conducted the trial and decreed the suit. The lower appellate court has concurred with the observations and the conclusions of the trial court. Hence this revision.

6. Learned advocate Mr. Mustafa for the petitioner would submit that the courts below have not appreciated the evidence in the proper perspective. They have overlooked important circumstances. The conclusions have been drawn based on surmises and conjectures rather than on evidence. The fact that the son of the respondent was already running a pharmacy just across the road was not disclosed in the plaint. This material fact was suppressed to suit the purpose, which is indicative of the fact that the need that was put forth was not *bona fide*. He referred to the following decisions.

(1) S. J. S. Business Enterprises (P) Ltd. Vs. State of Bihar and others; (2004) 7 Supreme Court Cases 166,

**(2) M/s. Vivek Trimbakrao Paturkar Vs. Sow.
Sulochanabai w/o Gangadharrao Wattamrao in Civil
Revision Application No. 91/2021 decided on 04.03.2022**

He submitted that the courts have dealt with a similar aspect of suppression of material of facts. The need therefore was not proved to be reasonable and *bona fide* still the courts below have taken the view which is perverse and arbitrary.

7. Mr. Mustafa would further submit that even the issue regarding comparative hardship under sub Section 2 of Section 16 of the Act was also not properly decided by the courts below. They failed to take cognizance of the fact that the entire property behind the demised premises consisting of 10,000 square feet was available to be used for the business of the respondent's son. When the respondent himself has been running a pharmacy in the adjoining shop, its depth could have been increased by including the portion of the property purchased by him. As against this there was no evidence before the courts below to demonstrate availability of any suitable premises for use of the petitioner. Mr. Mustafa would further submit that the decisions under challenge are perverse and arbitrary and the revision be admitted. Mr. Mustafa also placed reliance on the following decisions :

**(1) Rukminibai Motiram Kshirsagar (deceased) through
its legal heir Vs. Manoramabai Mallikarjun Bagale
(deceased) through legal heir; (2020) 2 Mh. L. J. 756.**

**(2) K. B. Lahoti and Company and others Vs. Champalal
Vithuram Jajoo (deceased) by his L.Rs.; 2020(5) Mh.L.J.
196.**

8. The learned advocate for the respondent supported the judgments of the courts below. He submitted that there was ample evidence before the

courts below to demonstrate that the respondent was in need of the demised premises for his use and occupation *bona fide*. The fact that his son was running a pharmacy just across the road by taking a premises on lease and his being a diploma holder in pharmacy have been rightly taken into consideration by the courts below to affirm his need. It could not have been expected of him to have allowed the son to continue to occupy the rented premises when he himself has been running a pharmacy in the adjoining shop. It was not a fact which was intended to be suppressed. In fact, the fact that the son was a diploma holder in pharmacy was specifically pleaded and the fact that he subsequently started the pharmacy across the road are the facts which corroborated the need that was being put forth. He was not to gain anything by not disclosing the fact. Both the courts below have appreciated the evidence and circumstances available on the record and have reached a plausible conclusion about existence of the need for personal use and occupation and that it was *bona fide*.

9. Even on the ground of comparative hardship, the courts below have reached a plausible conclusion. They have pointed out as to how there was no sufficient evidence to demonstrate any attempt having been made by the petitioner to search for any alternate premises. His conduct was noticed while reaching a conclusion that even the issue regarding comparative hardship was tilting in favour of the respondent.

10. Admittedly, the eviction suit has been decreed on the sole ground of reasonable and *bona fide* requirement for personal use and occupation as contemplated under Section 16(1)(g) of the Act and therefore the enquiry needs to be restricted only to that extent, of course along with the issue regarding comparative hardship which is an integral part of such a ground.

11. At the outset, it is necessary to bear in mind that this is a revision under Section 115 of the Code of Civil Procedure and therefore while exercising such a jurisdiction this court cannot enter into the realm of

reassessment and reappréciation of evidence as has been held in the matter of **Lachhman Dass vs Santokh Singh; (1995) 4 Supreme Court Cases 201**. It is to be borne in mind that apart from such limitation there are concurrent findings of the facts of the courts below. It is equally trite that this court can invoke the revisional jurisdiction only if the decisions are perverse, arbitrary or capricious. Bearing in mind these principles let us approach the dispute.

12. There is no dispute about the fact that the respondent has purchased the demised premises and the property of which it is a part from its erstwhile owner in the year 2012. Even it is admitted that he himself runs a pharmacy in the shop adjoining to the demised premises. Though it was not disclosed in the plaint, admittedly, the son of the respondent also runs a pharmacy in front of the demised premises across the road. There is also no dispute about the fact that he is a diploma holder in pharmacy and has taken that premises on lease on a rent of Rs. 13000/- per month. With such state of affairs, it is but natural for any body in the place of the respondent to expect that even his son would occupy the demised premises to runs the pharmacy which could be in the nature of an extension of the existing pharmacy of the respondent. The courts below have meticulously scanned the evidence to reach a conclusion, by taking note of the aforesaid state of affairs that the respondent was in need of the demised premises for his personal use and occupation to enable his son to run a pharmacy.

13. The courts below have also noted that though an additional premises is available on the back side, it was of residential use and a tenant cannot prevail over the wish of a landlord as to how he should put the property owned by him to a better use. Referring to the catena of decisions of the Supreme Court as well as this court, they have pointed out as to how it is trite that the court has to proceed with the presumption that the need being put forth by a landlord is reasonable and *bona fide* and it is for the tenant to prove otherwise.

14. As far as the submission of the learned advocate Mr. Mustafa regarding suppression of fact that the respondent's son was running a pharmacy across the road, in my considered view, it does not seem to be an attempt at hide and seek. No prudent man would suppress such a fact with a view to gain anything. Running of a pharmacy across the road by the son could not have been said to be a fact which could have been easily suppressed so that the respondent would have done so intentionally. At the very first attempt he fairly admitted the fact. Therefore, the submission of the learned advocate that this fact was intentionally suppressed and belies the respondent who intends to demonstrate his needs to be *bona fide*, cannot be accepted.

15. In the matter of **S.J.S. Business Enterprises (supra)** the Supreme Court has made it clear that the general rule of denial of relief applies only when suppressed fact is a material one which would have an effect on the merits of the case. In that matter the writ petition was filed without disclosing the fact that the petitioner had already filed a civil suit for the same relief. The High Court granted interim relief in the writ petition. However, the suit was already withdrawn and was not pending at the time the writ petition was heard. It was held that the writ petition which was otherwise maintainable could not be rejected on the ground of suppression of the fact of filing of the suit.

16. In the matter of **M/s. Vivek Trimbakrao Paturkar (supra)**, as can be seen from paragraph No. 14 to 16 this court has elaborately discussed as to existence of several other properties with the landlord which fact was not disclosed in the plaint and it was expected that when he was seeking possession of the demised premises, he ought to have come with disclosure regarding all the properties in his possession.

17. As against these decisions, in the matter in hand, as is pointed out herein above, the fact that the need was being put forth by the respondent

for the use of the demised premises for his son to run a pharmacy. Though the son was already running a pharmacy across the road, it was not a fact which in the circumstances was suppressed with some ulterior motive. Rather it further corroborates the ground of need for personal use and occupation. Consequently, the petitioner is not entitled to derive any benefits from these two decisions.

18. Rather the aforementioned circumstance would clearly corroborate and justify the need being put forth by the respondent. It was specifically pleaded by him that his son was a diploma holder in pharmacy and was in need of premises. The fact has been corroborated by the fact that the son occupied rented premises and was running a pharmacy therein. If such is the state of affairs, the concurrent conclusion drawn by the courts below that the respondent was in need of the demised premises for his personal use and occupation reasonably and *bona fide* was based on correct appreciation of facts, circumstances as indicated in the evidence and the law applicable. They have taken a plausible view which cannot be said to be perverse or arbitrary.

19. Same is the case with the observations and the conclusions of the courts below as regards the issue regarding hardship. It is trite that in every eviction there would be hardship to a tenant. What is required to be established is that the hardship would be more to him as compared to the landlord. Though not expressed in so many words the courts below were alive to such position in the law and have objectively scrutinized the evidence and given a plausible reasoning to reach a concurrent finding that the issue tilted in favour of the respondent rather than the petitioner. It was pointed out that the respondent was in need of the demised premises for the use by his son for running a pharmacy and he was already occupying a rented premises and was running a pharmacy across the road that too in spite of having purchased the property. As against this, they pointed out that the petitioner had not taken steps to search for any alternate premises

wholeheartedly. I, therefore, do not find that the observations and the conclusions of the courts below in this regard are perverse and arbitrary so that this court can cause any interference in exercise of revisional jurisdiction.

20. As laid down in the matter of **K.B. Lahoti and Company (supra)**, relying upon the decision of the Supreme Court in the matter of **Raja Lakshmi Dyeing Works Vs. Rangaswamy Chettiar; (1980) 4 Supreme Court Cases 259**, the revisional jurisdiction vesting in the High Court does not take into its sweep the power to reassess and reappreciate the evidence.

21. The revision is dismissed.

(MANGESH S. PATIL, J.)

mkd/-