

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 34 OF 2021

- 1] Fulchand Danmal Jain (Deceased)
A registered Partnership Firm
having its business place at
297, Raviwar Peth, Pune 411 002.
- 2] Subhash Danmal Jain,
Age :- 60 years,
- 3] Prakash Danmal Jain,
Age :- 57 years,
Both having address as
297, Raviwar Peth, Pune 411 002.

.. Applicants
(Orig. Defendants)

Versus

- 1] Vimal Balkrishna Kharote,
Age :- 73 years,
- 2] Yogesh Balkrishna Kharote,
Age : 47 years,
- 3] Shailesh Balkrishna Kharote,
Age 42 years ,
All Residing at 297, Raviwar Peth,
Pune 411 002.

.. Respondents
(Orig. Plaintiffs)

Mr. Sachin Punde, Advocate for applicants
Mr. Jaydeep Deo, Advocate for respondents.

**CORAM : A.S, GADKARI,J.
RESERVED ON : 28TH OCTOBER, 2021
PRONOUNCED ON : 25TH JANUARY, 2022.**

JUDGMENT :-

1] Applicants, Original Defendants/Tenants, have preferred the present Revision Application under Section 115 of the Code of Civil Procedure (for short, “CPC”) impugning the Judgment and Order dated 2nd January, 2020 passed in Regular Civil Appeal No. 597 of 2016 by the learned 5th Ad-hoc District Judge, Pune, dismissing the said Appeal preferred by Revision Applicants, thereby confirming the Judgment and Order dated 28th March, 2016, passed by the learned Additional Small Cause Judge and Joint Civil Judge, Senior Division, Pune in Civil Suit No. 291 of 2007 filed by the respondents/Original Plaintiffs/Landlords.

2] Heard Mr. Punde learned Advocate for the applicants and Mr. Deo, learned Advocate for respondents. Perused entire record annexed to the petition.

3] It is an admitted fact on record that, the respondents are successors of late Balkrishna S. Kharote, to whom the property including suit premises was devolved after demise of Smt. Sakhubai Kharote. The suit premises is a shop admeasuring about “10 feet x 18 feet”, situated on the ground floor of the property bearing CTS No. 297, Ravivar Peth, Pune and more specifically described in para No.1 of the plaint filed by the respondents. It is also an admitted fact on record that the applicants are

tenants of respondents.

4] The respondents filed a suit bearing Civil Suit No. 291 of 2007 against the applicants for eviction and recovery of possession of suit premises on the ground of non-user of suit premises since 25.12.2001; carrying out alterations/construction of permanent nature in the suit premises; caused damage to the suit premises; suit premises was reasonably and bonafide required by the respondents for their business use and occupation; arrears of rent; nuisance/annoyance and for sub-letting of suit premises.

5] It is the case of the respondents that, the suit premises was originally let to the father of applicant Nos. 2 and 3 in the year 1950 on monthly rent of Rs. 20/-, by executing an agreement (Exh. 302) in that behalf. Suit premises was taken on rent by father of applicant Nos. 2 and 3, namely, Shri Fulchand Danmal Jain from the predecessor in title of the respondents. Suit premises was let on rental basis for carrying out the business of utensils only. Since 25.12.2001, the applicants were not carrying out any business in the suit premises. Suit premises was kept locked and unused without any reasonable cause by the applicants. Because of non-use of the suit premises and negligence of the applicants, the suit premises got damaged and was infected by rodents, due to which the health of the respondents was adversely affected. It was the further

case of the respondents that, in the last week of January, 2007, by taking undue advantage of the fact that respondents are staying on the first floor and in their absence in the last week of January and more particularly from 26.1.2007 to 31.1.2007 the applicants carried out illegal structural changes in the suit premises. That, the applicants scrapped the two feet wall located on the southern side of the suit premises and increased the total floor area of the suit premises, thereby weakening the structure adjoining the suit premises, causing danger to the entire suit property. That, wooden door situated on the west side, which was being used for the ingress and egress, was permanently closed by erecting cement brick wall. Applicants also removed old stone flooring and replaced it with ordinary Mosaic flooring. It is also stated that, the applicants closed windows and erected wooden structure of permanent nature on the northern side wall of the suit premises. Applicants also removed wooden pillars and materially changed nature of the suit premises.

It is the case of the respondents that, respondent No.1 is a widow and is totally dependent upon the respondent Nos. 2 and 3. Respondent No.2 is a Naturopathy Doctor by profession. Respondent No.3 is running a shop of jewellery. Respondent Nos. 2 and 3, both are running their respective businesses in the space of 10 feet x 9 feet,

which is the only premises in their possession. The patients of respondent No.2 are facing difficulties in narrating their illness to respondent No.2 and therefore respondent No.2 was unable to prescribe specific medicines which ultimately caused loss of patients and income to respondent No.2. The respondent Nos. 2 and 3 were and are unable to carry out their respective vocations from the suit premises admeasuring 10 feet x 9 feet, which has adversely affected their livelihood. Due to the insufficient income arising out of non-availability of sufficient space, it has caused serious difficulties in their lives to sustain them and because of which both of them could not marry till the date of filing of suit.

It is the further specific case of respondents that, the applicants do not require suit premises as the applicants and their family members are carrying out their business at various places, description of which is given on internal page No.6 of the plaint (page 31 of this petition). It was alleged that, applicants are in arrears of rent for substantial period. It was contended by the respondents that, they are conducting their medical profession and business of jewellery in the adjoining premises to the suit premises. That, the premises of the respondents is situated in small lane, whereas, the suit premises is facing towards the main road. Respondents categorically averred that, the suit premises is required to them for their genuine need and bonafide

requirement to carry out their respective vocations. In this brief premise, the respondents filed civil suit bearing No. 291 of 2007 in the court of Small Causes Judge, Pune, at Pune, for eviction of applicants and for vacant and peaceful possession of the suit premises.

6] After receipt of summons, applicants appeared in the said suit, filed their written statement (Exh.32) and denied all the contentions of the respondents. They denied the contention that, the suit premises was taken only for selling utensils. It was contended by the applicants that, after demise of their father, the applicant Nos. 2 and 3 have continued with the business in the tenanted premises and it is only applicant No.1, who was separately carrying out business in another premises. That, they are not having any premises as alleged by the respondents in para. No.11 of the plaint. The applicants disputed the claim of the respondents about their need of suit premises for bonafide and reasonable purposes. However, the applicants admitted the fact that, the suit premises is located in the market place abutting the main road, having width of 15 feet. That, the premises of respondents is situated in a lane which having sufficient width for the customers or patients of the respondents to approach them and, therefore, there is no question of lowering down income of the respondents. Various other contentions of the respondents in the plaint have also been denied by the applicants.

7] Taking into consideration pleadings of both sides the trial court framed issues below Exh. 289. In support of their case, the respondent No.2 – Yogesh Balkrishna Kharote, produced on record and proved various documents. Respondents also examined Mr. Dattatray V. Diwakar (PW-2), an Architect by profession. The said witness has proved Inspection Report (Exh.98) and the map of suit premises (Exh.99).

In support of their claim, the applicants examined Applicant No.2 Subhash Subhash Danmal Jain @ Sanghwi (DW-1). He produced on record various bills, invoices, delivery challans (Exhibits 125 to 164) and various other documents, which have been exhibited by the trial court. The applicants, in support of their case also examined Mr. Prashant Kumar Pradhan (DW-2) an Income-Tax Inspector of Ward No. 6/3, Pune; Mr. Vijaykumar Jain (DW-3) having business relations with the applicant; Mr. Sunil B. Khaire (DW-4) Shop Act Inspector; Mr. Phulchand Oswal (DW-5); having business relations with the applicants and Mr. Balkrishna Goyal (DW-6).

8] The trial court, after recording evidence of the said witnesses and after hearing the learned Advocates for the parties, was pleased to decree the said suit on the ground of non-user of suit premises since 25.12.2001; carrying out construction/alterations of permanent nature in the suit premises; causing damage to the suit premises,

bonafide and reasonable requirement of the respondents and nuisance and annoyance. The trial court also held that, greater hardship would be caused to the respondents if decree of eviction is refused to them. The trial court, however did not accept the contention of the respondents as far as arrears/default in rent and sub-letting of suit premises. The trial court accordingly passed Judgment and Order dated 28.3.2016 decreeing the said suit with costs and directed the applicants to hand over, vacant and peaceful possession of the suit premises to the respondents, within a period of two months from the date of passing of the said Judgment and Order. The trial court also directed to conduct separate enquiry for mesne profits, as contemplated under Order 20 Rule 12 of C.P.C.

9] Feeling aggrieved by the said judgment and order dated 28.3.2016 passed by the trial court, the applicants preferred R.C.A. No. 597 of 2016 in the court of 5th Ad-hoc District Judge, Pune. The appellate court, by its impugned Judgment and Order dated 2.1.2020 was pleased to dismiss the same with costs. The appellate court has confirmed and upheld the decree of eviction on the ground of change or user, non-user of suit premises for a period of more than 6 months prior to date of institution of suit; the suit premises is bonafide and reasonably required by the respondents and acquiring suitable alternate premises by the respondents. The appellate court has also recorded a finding that,

greater hardship would be caused to the respondents and that, no hardship would be caused to the applicants if the suit is decreed.

10] It is an admitted fact on record that, suit premises admeasures 10 feet x 18 feet. The Shop Act licence (Exh. 208) issued in favour of applicants mentions the nature of business as “Tamba, Pital” etc. and as per the original agreement, the suit premises was let for carrying out the business of utensils only. The applicants have produced on record bills, invoices, deliver challans (Exh. 125 to 164) which show that, the applicants are dealing in the business of Copper Wires and Stainless Steel Sheets. Huge bundles of copper wires, SS Sheets, Coils weighing more than 4000 Kgs. to 5000 Kgs. were supplied on the address of the suit premises. As the said documents have been produced by the applicants themselves, it clearly discloses that, the suit premises was used for the purpose of some other activity and not for sale of utensils, as mentioned in the Shop Act licence. As per the Rent Note (Exh.356), the suit premises was given for the purpose of selling utensils. Applicant No.2 in his evidence has admitted that, his father was carrying business of selling utensils of copper, brass, still and aluminum and sale and purchase of old scrap of same metal. It is thus clear that the suit premises was being used for the said activity only till the demise of father of applicant Nos. 2 and 3. Applicant No.2 has deposed that, they were

carrying out the business of selling the utensils and have not averred that, they were carrying out the business of supply of copper wires or stainless sheets from the address of the suit premises. The invoices produced on record by the applicants prove contrary to what has been deposed by applicant No.2 in his evidence. Even otherwise, it is very difficult to accept that, the said huge bundles of stainless steel, copper wires/coils weighing about 3000 to 5000 Kgs in one consignment can be put in or accommodated in the suit premises. It is thus clear that, the applicants have changed the user of the suit premises than for which it was rented out without lawful permission from the respondents.

11] Record reveals that, there is a report of Court Commissioner (Exh.45) appointed by the Court. It is stated therein that, the suit premises was constructed with wooden columns & beams. That, there is support of iron girdle given to the suit premises on the left side from the entrance. That, in the suit premises new utensils and some boxes and one electric machine were kept. Flooring of the suit premises was of Shahabadi tiles. Plywood has been fixed to the roof and the width of the wall is ½ feet . This description given by the Court Commissioner is self eloquent to draw a safe inference that, the walls were chiseled by the applicants to increase the area of the shop/suit premises.

It clearly discloses that, the applicants have carried out material alterations of permanent nature in the suit premises without lawful consent of the respondents, caused damage to it and therefore they were required to give support of iron girdle to the ceiling of suit premises.

12] As far as non-user of suit premises for continuous period of six months prior to the date of institution of the suit is concerned, record indicates that, the present suit was filed by the respondents on 15.6.2007 and therefore the date for reckoning the period of six months prior to 15.6.2007 for non-user of the suit premises would be 14.12.2006. It is the precise case of the respondents that, the applicants were not using the suit premises since 25.12.2001 and it was kept locked since then. It is to be noted here that, the specific deposition of the respondent No.2 has not been shaken or countered in his cross-examination by the applicants. It is thus clear that, the applicants were not using the suit premises for a period of six months prior to the date of institution of the suit and according to this Court, they were and are not in need of the suit premises any more.

13] As far as acquisition of other properties by the applicants for their business purposes is concerned, respondents in para.11 of the plaint have categorically averred that, the applicants have acquired 4 other

properties and are carrying out their business activities therefrom. It clearly appears from the record that, the applicant No.3 - Prakash is owner of properties standing in his name and he runs an enterprise, by name, "Prakash Industries". That, he alongwith his brother (applicant No.2) are partners in the enterprise by name, "Phulchand Jain & Company". The said fact has been admitted by applicant No.3 - Prakash in his evidence. The Tax receipt produced on record dated 7.12.2006 clearly indicates that, the property bearing CTS No. 1692 is standing in the name of applicant No.2 Subhash. The record further indicates that, the respondents have produced on record an invitation card of Miss Sonal i.e. daughter of applicant No.3 Prakash. The said invitation card has been admitted by applicant No.2 - Subhash in his evidence. Perusal of said invitation card discloses that, there is mention of four different business enterprises of the applicants. Perusal of evidence of applicant No.2 Subhash clearly indicates that, he has given evasive replies when asked about the said business enterprises. Both the Courts below have expressed their view that, the testimony of Subhash is not reliable as he has given evasive answers to the questions put to him in his cross-examination. I find that, the observations made by both the Courts below are correct and there is no need to take any contrary view therefrom. It is thus clear that the applicants are having various business

establishments in the city of Pune and they have acquired suitable alternate premises for the same and are not in need of suit premises.

14] This takes me to consider the comparative hardship of the parties herein. As noted above, applicants have acquired other alternate premises for their business purposes in the vicinity of Pune city and are carrying out their respective vocations therefrom. Their mentioning of the said business premises on the marriage invitation card of Miss Sonal is a substantive piece of evidence against them in that behalf. As noted earlier, the said fact has been duly proved by the respondents by leading cogent evidence in that behalf. In this background, it is to be noted here that, the respondent Nos. 2 and 3 are running their independent vocations from a shop admeasuring 10 feet x 9 feet situated behind the suit premises and the ingress and egress to the said shop is through filthy alley and therefore the suit premises which faces the main road is more convenient for setting up the vocations/business establishments of respondent No.2 and 3. The fact that the shop of the respondents is on the rear side of the suit premises and needs access road through filthy alley has come on record in the report of the Court Commissioner as well in the evidence of respondents. The evidence on record clearly indicates that, the applicants are brothers and they have various business establishments/shops in the vicinity of Pune city. As noted earlier, the

evidence of applicant No.2 – Subhash is not reliable and trustworthy as he gave evasive answers/replies to the queries including that, he was not aware that applicant No.3 Prakash was having shop in the market area in the name and style of Prakash Metals. It is an admitted fact on record that respondent Nos. 2 and 3 are facing tremendous difficulties in their life while carrying out their two different vocations from a small shop which is situated behind the suit premises. According to this court, the respondents are facing greater hardship in their life than the applicants and if the decree of eviction of the applicants is denied, it may cause injustice to them. It is the settled position of law that, the landlord is the best judge of his requirements and the tenant cannot dictate him about his need in that behalf.

It is also the settled position of law that, even one fully established ground is sufficient to attract the decree of eviction under the Rent Act. In the present case, the respondents by preponderance of all probabilities have proved the grounds of change of user; non-user of suit premises for more than six months; acquisition of suitable alternate premises and bonafide and reasonable requirement of the landlord, for eviction of the applicants from the suit premises.

15] It is to be noted here that, during the course of arguments, upon a query put to the learned Advocate for the applicants by this

court, on instructions he fairly submitted that, the applicants have neither created any third party right title or interest in the suit premises, nor have they sub-let it to anybody else. The said statement is accepted.

16] There are concurrent findings recorded by both the courts below on the aforesaid points. Perusal of impugned Judgments passed by both the Courts below would clearly indicate that, they have not failed to exercise jurisdiction so vested in them and have acted in exercise of its jurisdiction legally. There is no material irregularity committed by both the courts below while passing impugned Judgments and Orders.

17] In view of the aforesaid deliberation, this Court is of the considered view that, both the Courts below have not committed any error either in law or on facts while passing the impugned Judgments and Orders.

The revision being dehors of merits, is accordingly dismissed.

[A.S. GADKARI]
JUDGE.

grt/-