

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

CIVIL REVISION APPLICATION NO. 338 OF 2008
WITH
CIVIL APPLICATION NO. 512 OF 2010.

- 1] Surgonda Kalgonda Patil
Age 67 years, Occ. Serviceman,
r/o. Plot No.7, Shivaji Colony,
Dhamani Road, Vishrambag,
Sangli.

.. APPLICANT,
[Orig. Applicant]

VERSUS

- 1] Ramkrishna Apa Topkar,
Age 69 years, Occ. Service,

2] Bhanudas Appa Todkar
Age 62 years, Occ. Retired/Business,

3] Sou. Sindhu Ramkkrishna Topkar
Age 58 years, Occ. Housewife,

4] Sou. Rekha Bhanudas Tolpkar
Age 53 years, Occ. Service,

Nos. 1 and 2 r/o. 394/B,
Dr. Ambedkar Road, Sangli,
Nos. 2 and 4 r/o. Swati Apartment,
Flat No.7, Gulmohar Colony,
S. Shivajinagar, Sangli.

.. OPPONENTS.
[Orig. respondents]

Mr. Sandesh D. Patil Advocate a/w Anusha Y. Amin i/b. Mr. PP Jadhav,
Advocate for applicant,
Mr. Vinod Sangvikar a/w Ms. Rui Danawala i/b. Mr. Umesh Mankapure,
Advocate for respondent Nos. 1 and 3.

CORAM : A.S. GADKARI. J.
RESERVED ON : 16TH DECEMBER, 2021.
PRONOUNCED ON : 2nd FEBRUARY, 2022.

JUDGMENT. :-

1] Applicant, original plaintiff has filed present Revision under Section 115 of the Code of Civil Procedure (for short, CPC) impugning the Judgment and Order dated 12.11.2007 passed in R.C.A. No. 252 of 2002 dismissing the said appeal and confirming the Judgment and Order dated 14.8.2002 passed in R.C.S No. 462 of 1995 filed by the applicant.

2] Heard Mr. Sandesh Patil, learned counsel for the applicant and Mr. Vinod Sangwkar, learned counsel for respondent. Perused entire record.

3] Applicant, plaintiff had filed a suit for possession of suit premises, description of which is more specifically given in para. No.1 of the plaint and for recovery of arrears of rent thereof. The said suit was filed on the grounds of willful default in payment of rent; acquisition of suitable alternate accommodation by the respondents and reasonable and bonafide need of the applicant for his personal use and occupation.

It was the case of the applicant that, the respondents are his tenants and they alongwith their sons are residing in the suit property. The suit property came to the share of the applicant in furtherance of

Partition dated 20.1.1987 in the larger joint family of the applicant. That, the applicant is landlord and respondents are tenants in the suit premises. The respondents had agreed to pay rent of Rs. 225/- p.m. excluding electricity and water charges. Despite admitting said rent, respondents avoided to pay it. Respondent No.1 had sent a letter dated 26.8.1992, making false allegations regarding excessive rent amount. Respondent No.1 thereafter sent the amount of rent by way of Money Order in the year 1992. However applicant did not accept it, as according to him, it was insufficient amount. That, the respondent No.2 had personally agreed to pay entire arrears of rent since April, 1987 as well as to vacate suit premises. However, he did not pay the said amount and became willful defaulter. Respondent Nos. 1 and 3 filed Misc. Application No. 4 of 1993 for fixing of standard rent. However, the same was dismissed by the concerned Court on 3.7.1995. The respondents were thus, in arrears of Rs.15975/- till August, 1995.

That, respondent Nos. 1 and 2 were residing jointly in the suit premises. They had purchased one plot of land in Sangli in September, 1983. Respondents had assured the applicant that, they would construct house on the said plot and after completion of construction within a period of a year they would vacate suit premises. However, respondents sold the said plot of land to Mr. Rajendra Shah

alongwith halfly completed construction on it. That, out of the sale proceeds of the said plot of land, respondents have purchased one flat in Swati Apartment, Gulmohar Colony, Sangli. That, respondents intentionally let out the said flat to some other person and are residing in the suit property. It was therefore alleged that, the respondents have acquired suitable alternate accommodation in Swati Apartment at Sangli.

It was further case of the applicant that, he required suit premises reasonably and bonafide for the purpose of business of his son. That, applicant's son then had acquired B.E. Degree and intended to reside in the suit property as well as to start his own business in the open premises of the suit property. For the said purpose, applicant's son had acquired licence and also completed necessary formalities to carry out his business. That, if the decree for possession is not passed in favour of the applicant, his son would be deprived from earning his livelihood and settling in his life. Applicant had therefore contended that, he will suffer greater hardship if decree is not passed in his favour.

Applicant, therefore issued a notice dated 30.5.1994 to the respondents terminating their tenancy and demanded vacant possession of the suit property alongwith arrears of rent. As the respondents did not pay arrears of rent and also refused to vacate the suit premises, applicant filed present suit.

4] After receipt of suit summons, respondents appeared before the trial court and respondent Nos. 1 and 3, being husband and wife, filed their written statement below Exh.42. They denied all the contentions of the applicant. They stated that, they were not residing alongwith respondent Nos. 2 and 4. That, respondent Nos. 1 and 3 are residing in the suit property and respondent Nos. 2 and 4 are residing separately in Swati Apartment, Gulmohar Colony, Sangli since 1993. That, the financial condition of respondent Nos. 2 and 4 was sound and therefore they acquired accommodation for themselves and are residing therein separately from the respondent Nos. 1 and 3. Respondent Nos. 1 and 3 also denied that, standard rent of the suit property was Rs. 225/- p.m. excluding electricity charges and contended that, as a matter of fact, it was agreed to pay Rs. 150/- p.m. as standard rent.

That, respondent Nos. 1 and 3 had also sent a letter on 26.8.1992 to the applicant alongwith Money Order of the rent amount. However, applicant refused to accept the same. Respondent Nos. 1 and 2 therefore filed Misc. Application No. 4 of 1993 for fixing standard rent of the suit premises, which was pending at the time of filing of suit premises. Respondent Nos. 1 and 3 also contended that, they are the only tenants in the suit premises. That, some rooms are lying vacant on the first floor of the suit property. That, respondent Nos. 2 and 4 were

having no concern with the suit premises and despite the said fact, applicant intentionally arrayed them as defendants in the suit, taking disadvantage of the inter-se relations between respondents. Respondent Nos. 1 and 3 categorically averred that, they have not acquired alternate accommodation. That, respondent No.1 has retired from service. He was working as a Driver but due to old age, he was unable to do work. Respondent No.1 and 3 specifically pleaded that, vacant premises on the first floor of the suit property was very much available to the applicant and if he had genuine intention to start business, he could have utilized the same. That, applicant wanted to evict respondents from suit premises to let it out to other person for getting higher amount of rent and therefore, he had filed the present suit.

5] Respondent Nos. 2 and 4 are husband and wife. They also filed written statement below Exh.23 and denied all the contentions of the applicant. They categorically pleaded that respondent No.3 was residing alongwith respondent No.1 in the suit premises till the year 1993 only. That, respondent No.4 was serving in B.Ed. College at Sangli as a Professor. That, their financial condition was sound and therefore they purchased a flat in Swati Apartment at Sangli and are residing there separately from respondent Nos. 1 and 3. That, they had also booked a plot of land in the proposed Avadhut Griha Nirman Sanstha, Sangli.

Thereafter, respondent No.2 had applied for loan in Sangli Urban Cooperative Bank and borrowed an amount of Rs. 50,000/- for construction work on the said plot. When they started construction work on the said plot, they realized that, to construct a bungalow thereon was beyond their capacity and therefore they sold partly constructed premises with the said plot to one Mr. Rajendra Shah in order to satisfy the loan amount borrowed from the concerned bank. That, thereafter they purchased the said flat in Swati Apartment for their personal use. These respondents have also categorically alleged that, there were rooms available on the first floor of the suit premises to satisfy the need of the applicant. These respondents contended that they had been unnecessarily involved in the said suit by the applicant.

6] In view of the pleadings of both the parties, the trial court framed issues below Exh.24 on 29.4.1998. The trial Court, after recording evidence and hearing the parties to the said suit, was pleased to dismiss it by its Judgment and Order dated 14.8.2002. The trial Court has come to the conclusion that on the date of filing of the suit, respondent Nos. 1 and 3 were not in arrears of rent; they did not acquire suitable alternate accommodation for themselves and it was acquired by respondent Nos. 2 and 4, who have no concern with respondent Nos. 1 and 3; suit premises was not reasonably and bonafide required for

personal use and occupation of the applicant and greater hardship would be caused to the respondent Nos. 1 and 3, if decree is passed in favour of the applicant.

Feeling aggrieved by the said Judgment and Order dated 14.8.2002, applicant preferred R.C.A. No. 252 of 2002 in the District Court at Sangli. The learned Principal District Judge, by its impugned Judgment and Order dated 12.11.2007, was pleased to dismiss the same with costs.

7] Mr. Patil learned counsel for the applicant in his elaborate arguments submitted that, in Application No. 4 of 1993 filed by respondent No.1, he claimed to have deposited an amount of Rs.4,100/- under Receipt No. C-679. That, when the applicant filed an application for withdrawal of the said amount, it was informed to him by the concerned department of the Court that the respondent No.1 had not deposited the said amount of Rs.4100/- vide receipt No.C-679. He submitted that, thus the respondent No.1 had committed default in making payment of rent in the Court. He submitted that, it was subsequently revealed that, the respondent No.1 had filed a forged receipt bearing No. C-679 for Rs. 4,100/- in the trial Court and therefore applicant had preferred Regular Criminal Case No. 316 of 2005 under various provisions of I.P.C. in the Court of Chief Judicial Magistrate,

Sangli. He submitted that, even on the first date of hearing of the said suit, respondent No.1 did not deposit the contractual rent and therefore also had committed default in making payment of rent. That, the chart annexed at page Nos. 68 to 70 to the Revision, would reveal that the respondent No.1 had made sporadic payments which is not contemplated under Section 12(3) of the Rent Act. In support of his contention, he relied upon a decision of the Honourable Supreme Court in the case of *Mranalini B. Shah and another Vs. Bapalal Mohanlal Shah reported in (1980)4 SCC 251*. He submitted that, both the Courts below have not appreciated the aspect of reasonable and bonafide need/requirement of the applicant of the suit premises, so also, the aspect of greater hardship. That, the respondent No.1 had capacity to purchase other premises from his retirement benefits which he did not do and continued to remain in suit premises for no reasons. He further submitted that, the appellate Court being the last fact finding Court, ought to have considered the aforesaid stated facts in its proper perspective, which it has failed to do and therefore the impugned Judgment and Order is bad in law.

8] Per contra, Mr. Sangwkar, while opposing the revision application submitted that, on the date of filing the present suit i.e. on 2.9.1995, there was no cause of action alleging default in payment of rent on the part of respondent No.1, as on that date, the application for

fixing standard rent bearing M.A. No. 4 of 1993 of the respondent No.1 was pending. That, respondent No.1 had, in fact, handed over the sum of Rs.4,100/- to his Advocate namely, Shri P.B. Dhonde, who had given a photo copy of receipt in respect of deposit of amount of rent in the Court. The respondent No.1 had bonafide handed over said amount to his Advocate and thereafter he was having no concern with it. He submitted that, the respondent No.1 never neglected to pay contractual rent to the applicant and therefore Section 12(3) of the Rent Act will not be applicable to the present case. In support of his contention he relied on the decision of the learned Single Judge of this Court in the case of *Bai Mohinibai Dharmasey vs. Khimji Tokarshi Jivraj and another reported in AIR 1976 Bombay 295*. He submitted that, the applicant has failed to prove the fact that, the respondent Nos. 1 and 3 were and are defaulters. That, the applicant has also failed to prove his reasonable and bonafide requirement for suit premises and acquisition of suitable alternate premises by respondent Nos. 1 and 3. That, both the Courts below have recorded concurrent finding of facts and therefore present application under Section 115 of C.P.C. may not be entertained. He submitted that, there are no merits in the present revision and the same may be dismissed.

9] At the outset, it is to be noted that, in para. No.8 of his plaint, the applicant himself has admitted the fact of filing of Misc. Application No. 4 of 1993 by the respondent No.1 for fixation of standard rent. He has also admitted the fact that, in the said application, between 10.9.1993 to 8.12.1994, respondent No.1 had deposited certain amounts towards rent, though insufficient, in the Court. The respondent No.1 thereafter filed an application i.e. C.A. No. 137 of 1995 for restoration of Misc. Application No. 4 of 1993 on 2.8.1995. In this background it is important to note here that, the present suit was filed on 2.9.1995. It is thus clear that, prior to filing of present suit by the applicant, respondent No.1 had already filed an application for fixing standard rent of the suit premises and the same was sub-judice. It has also come on record that, in his cross-examination, the applicant has admitted the fact that, he refused to accept money order sent by the respondent No.1, as according to him it was for lesser amount than the arrears of rent. It is thus crystal clear that, on the date of filing of the suit, i.e. 2.9.1995, the respondent No.1 was ready and willing to pay standard rent towards suit premises and was not negligent in paying the same. A minute perusal of record indicates that, the said amount of Rs. 4,100/- under receipt No. C-679 was deposited by respondent No.1 in Civil Application No. 4 of 1993 filed under Section 11(3) of the Rent Act for fixation of standard rent of the

suit property. The first date of hearing of the suit i.e. the date on which issues were framed by the trial Court was on 29.4.1998 and on that date itself, respondent No.1 had in fact deposited a sum of Rs. 300/- (page No.69 – entry No. 18) in the trial Court towards the rent for the months of April and May 1998. Record further indicates that respondent No.1 had regularly deposited rent in the trial Court and even on some occasions, in advance. Thus, the ground of default of payment of rent by the respondent Nos. 1 and 3 does not survive. The respondent No.1 had also raised a dispute with respect to fixing of standard rent, as contemplated under Section 11(3) of the Rent Act prior to filing of suit by the applicant and therefore also the suit filed by the applicant under Section 12(3) of the Rent Act is not maintainable.

10] This leads me to deal with the ground of suitable alternate accommodation allegedly acquired by respondent Nos. 1 and 3. Section 13(1)(l) mentions about the acquisition or allotment of 'suitable residence'. In the present case, it is an admitted fact on record that, the respondent Nos. 2 and 4 have acquired residential accommodation at Swati Apartment, Gulmohar Colony, Sangli, from their own funds and they alongwith their children are residing therein. That, respondent Nos. 1 and 3 have no direct or indirect concern with the acquisition of the suit premises by the respondent Nos. 2 and 4. Though it was contended by

the learned counsel for the applicant that, respondent No.1 retired from his service on 20.7.1995 and got retirement benefits of Rs. 2,34,000/-, said amount was not sufficient for him either to purchase a new residence or construct a house on a plot of land, which he had allegedly purchased and therefore the elaborate arguments of the learned counsel for the applicant in that behalf, are devoid of any merit in it. Record clearly reveals that, respondent Nos. 1 and 3 have not acquired any other property which can be termed as 'suitable residence' for themselves and are residing in the suit property. It appears to this Court that, the applicant has unnecessarily impleaded respondent Nos. 2 and 4 in the present suit though they had left the suit premises and had started residing separately from respondent Nos. 1 and 3 since the year 1993. In view thereof, it is proved that, the respondent Nos. 1 and 3 have not acquired suitable alternate accommodation for themselves.

11] As far as the ground of reasonable and bonafide need of the applicant towards suit premises is concerned, it is to be noted here that in the plaint and also in his evidence, the applicant did not disclose the fact that on the first floor of the suit premises, some rooms were vacant which were in his possession. It was the case of the applicant that, his son obtained a Degree in Engineering and was intending to start his business to sell stationary construction and chemicals. The suit premises

was therefore required for his residence and open land in front of it was necessary for setting up his business. The evidence on record reveals that, the present suit was filed on 2.9.1995, however Licence and Registration of Small Scale Industries (Exhs. 67 and 68) were obtained by his son on 15.12.1997 and 14.10.1997, respectively. The Licence from Health Department was obtained on 20.12.1997. Thus, the said permissions were obtained by son of the applicant after filing of the present suit. It is to be further noted here that, the son of applicant in his evidence has admitted that, he intended to start his business from the suit premises. There is material contradiction in the pleading of the applicant and the evidence led by his son claiming the ground for reasonable and bonafide need of the suit premises. As the applicant's son has admitted that he intended to use suit premises for commercial purpose, change of user from residential to commercial purpose was not permissible under Section 25 of the Bombay Rent Act. Admittedly, the suit premises is being used by the respondent Nos. 1 and 3 for residential purpose. It has also come in the evidence of the applicant that, Rules of local authority cannot permit construction in open portion of the suit premises. In view thereof, this Court is of the considered view that, the ground raised by the applicant for eviction of respondent Nos. 1 and 3 on the ground of reasonable and boanafide need of the applicant for his

personal use and occupation is not genuine and bonafide and the applicant is therefore not entitled to get possession of the suit premises on that count.

12] As noted in the foregoing paragraphs, the respondent Nos. 1 and 3 are residing in the suit premises. The alleged suitable alternate accommodation claimed by the applicant has in fact been acquired by respondent Nos. 2 and 4. The respondent Nos. 1 and 3 have no direct or indirect concern with the acquisition of the premises in Swati Apartment Gulmohar Colony, by the respondent Nos. 2 and 4. Respondent Nos. 1 and 3 will certainly face greater hardship if decree of eviction is passed against them. However, if the decree of eviction against respondent Nos. 1 and 3 is denied to the applicant, he will not face any hardship as he was/is having some rooms vacant on the first floor of the suit property. As noted earlier, the ground raised by the applicant for reasonable and bonafide need of the applicant for his personal use and occupation, according to this Court, is not genuine and bonafide ground.

13] The aforestated deliberation leads to draw an irresistible conclusion that, both the Courts below have exercised their jurisdiction properly and have not failed in exercising it. It is also clear that both the Courts below have acted in exercise of their jurisdiction legally and there is no material irregularity committed by them.

The revision is accordingly dismissed.

14] In view of dismissal of Civil Revision Application No. 338 of 2008, Civil Application No. 512 of 2010 does not survive and same is disposed of.

[A.S. GADKARI]
JUDGE.

grt/-

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