

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

CIVIL REVISION APPLICATION NO.215 OF 2022

Shri. Suresh Rambhau Borde

..Applicant
(Org. Defendant)

Versus

Shri. Bhikachand Dadu Memjade

..Respondent
(Org. Plaintiff)

Mr. Akshay Chikhale, for the Applicant.

Mr. Saurabh M. Railkar, for the Respondent.

CORAM : NITIN W. SAMBRE, J.

DATE : 11th OCTOBER, 2022

PC.

1. This civil revision application is preferred by the defendant who suffered a decree for possession in relation to the suit property which consists of two rooms admeasuring 300 sq.ft. constructed on CTS No.543, Bhawani Peth, Pune. The civil appeal under Section 97 of the Code of Civil Procedure preferred by the applicant being Civil Appeal No.654 of 2014 was also dismissed by learned District Court on 21st December, 2021. As such, this application.

2. For the purpose of convenience, parties are referred to as per their nomenclature in the plaint/suit.

The respondent/plaintiff claims to be the owner of the suit property which the applicant allegedly was occupying on monthly rent of Rs.400/-. Alleging that the applicant has not regularly paid rent for seven years preceding the date of filing of the suit, so also the suit premises is not being used for the purpose for which same was let out and the applicant/defendant having shifted his residence to other property i.e. to CTS No.538, Bhawani Peth, Pune the eviction was sought. The ground for seeking possession by the respondent/plaintiff was bonafide need, he having suffered an accident and unable to climb stairs of the premises of which he is in possession. He has also pleaded that in view of the increasing number of family members viz. growth of family, existing accommodation is not sufficient.

3. The said prayer for termination of tenancy and grant of possession is denied by the applicant by filing his written statement at Exh.10. According to him, since 1961 the applicant/defendant is residing in the suit premises initially at the rent of Rs.10/- per month. According to him, Rs.6000/- advance was taken by the plaintiff in the year 2006, however, there is no electric connection provided to the suit premises. It is also claimed that the daughter of the applicant is taking tuitions in the suit premises for earning her livelihood. It is further urged by the applicant in written statement that the plaintiff owns another building in CTS No.541/546 having two flats, wherein his family members are residing conveniently. As such, it is claimed that the applicant/tenant will suffer

comparatively more hardship.

4. Having regard to the rival claims, the Judge, Small Causes Court, Pune framed issues which are as under :-

SR. NO.	ISSUES	FINDINGS
1.	Does plaintiff prove that the suit premises is reasonable and bonafide required for his own residence ?	...Yes.
2.	To whom greater hardship will cause ?	...To Plff. If decree is refused.
3.	Does plaintiff prove that the defendant has not used the suit premises without reasonable cause for a continuous period of six months immediately preceding to filing of suit ?	...Yes.
4.	Does plaintiff prove that the defendant has challenged the ownership and title of the plaintiff ?	...Yes.
5.	Does plaintiff entitle the decree of eviction	...Yes.
6.	What order ?	...As per final order.

5. In support of the claim of the plaintiff, he has filed affidavit of examination-in-chief at Exh.14, whereas the defendant has filed his affidavit of examination-in-chief at Exh.27.

6. After appreciating the evidence in the backdrop of rival pleadings, the suit came to be decreed vide impugned judgment

dated 19th September, 2014.

7. The civil appeal preferred by the applicant being Civil Appeal No.654 of 2014 was also dismissed after having noted that the respondent/plaintiff needs premises for bonafide accommodation and will suffer greater hardship as compared to the applicant. The Appellate Court has also recorded findings that preceding the date of filing of suit for six months, the suit premises were not used continuously by the applicant. It is also noted that the applicant has denied the title of the plaintiff over the suit premises.

8. In the aforesaid background, counsel for the applicant while assailing concurrent findings recorded by both the Courts below would urge that the findings recorded are required to be upset as the respondent/plaintiff has suppressed the material fact viz. the ownership as regards alternate premises. So as to substantiate his aforesaid contentions, he has invited attention of this Court to the pleadings in the plaint and the very finding recorded by both the Courts below. He has tried to impress upon this Court to cause indulgence in exercise of revisional jurisdiction by drawing support from the judgments of this Court in the matter of *Vivek Trimbakrao Paturkar Vs. Sulochanabai* reported in *MANU/MH/0742/2022*, *Vasant Mahadeo Gujar Vs. Baitulla Ismail Shaikh & Anr. with connected matters* reported in *2015 SCC OnLine Bom 4470*, *Saroja Parmeshwaran Vs. Padmakar Sit Aram Bole & Ors.* reported in *2010 SCC OnLine Bom 1003*, *Vinayak Narayan*

Deshpande & Ors. Vs. Deelip Prahlad Shisode reported in ***2009 SCC OnLine Bom 1941***, ***Dattatraya Ramchandra Sapkal Vs. Gulabrao Tukaram Bhosale*** reported in ***1977 SCC OnLine Bom 95*** and ***Narendra Gulabrao Zade Vs. Shiocharan Ghashiram Gupta & Ors.*** reported in ***2010 SCC OnLine Bom 1596***. In addition to above, his contentions are, the applicant's daughter being handicap lady is lost sight by the Courts below as she is using the suit premises for earning her livelihood by conducting tuitions. It is further claimed that the Courts below have committed an error in not appreciating factual matrix viz. availability of alternate accommodation to the respondent/ plaintiff, whereas counsel for the respondent/plaintiff submits that there is no error of jurisdiction or failure to exercise jurisdiction and as such, this Court cannot exercise revisional jurisdiction. As such, he has sought dismissal of the revision on the ground that the respondent/plaintiff has alternate accommodation, this fact is already disclosed.

9. I have appreciated the aforesaid submissions.

10. The suit came to be initiated in 2012 for possession alleging that the premises are required for bonafide need and same are not used since last six months for the purpose for which same was rented out. The said fact was denied by the applicant/defendant. He has rather admitted that the suit premises has no electric connection. He has further admitted that his daughter is conducting tuitions from the suit premises for earning

her livelihood. As such, there is admission on record that the suit premises are not used by the applicant for the residential purpose for which same was let out and the premises are being used by his daughter for conducting tuitions and also there is no electric connection. The applicant has claimed that the two flats owned by the applicant are given on rent, whereas in the plaint, it has been specifically pleaded by the respondent/plaintiff that in the flat located in CTS No.541/546 at Bhawani Peth, Pune his married son is residing with his family. He has also stated that the flats are located on the upper floors and in view of he is being disabled person unable to climb upper stairs and that being so, he has claimed that the suit premises are bonafide required.

11. It appears that both the Courts below have appreciated the said factual matrix and have noted that the respondent/plaintiff has established his bonafide need and the respondent/plaintiff shall suffer greater hardship. Said findings are supported by cogent evidence on record. The evidence of the respondent/plaintiff in categorical terms establishes the same. The claim put forth by the counsel for the applicant that the respondent/plaintiff has suppressed the material fact of having other alternate premises cannot be inferred or noted from the record as the respondent/plaintiff has specifically not only pleaded but also deposed about the same and his inability to occupy the said premises. As such, the law laid down in the judgments cited by the applicant will be hardly of any assistance to him.

12. From the pleadings and the evidence, the respondent/plaintiff has specifically established the very requirement under Section 16(1)(g) of the Maharashtra Rent Control Act, 1999 the bonafide need and the comparative hardship as prescribed under Section 16(2) of the said Act. The fact about the applicant not using the suit premises for the purpose for which it was let out for continuous period of six months preceding the date of filing of the suit can also be inferred from the record. As such, violation of Section 16(1)(n) of the said Act can be inferred on the part of the applicant. Apart from above, the fact remains that the applicant has gone to the extent of denying title of the respondent/plaintiff over the suit property as could be inferred from the pleadings of the applicant himself.

13. That being so, no error of jurisdiction or failure to exercise jurisdiction can be inferred.

14. The revision application as such lacks merits and same stands dismissed.

[NITIN W. SAMBRE, J.]