

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL REVISION APPLICATION NO. 47 OF 2020****WITH****CIVIL APPLICATION NO. 22 OF 2020**

Deepak Vikram Shinde & Anr.

... Applicants

V/s.

Mohan Mahadeo Mali & Ors.

... Respondents

Mr.Kaustubh Patil for Applicants.

Ms.Sarika Shetye i/b. Mr.S.B. Shetye for Respondents.

CORAM : A.S. GADKARI, J.**DATE : 29th March 2022.****PC. :**

1. Applicants, legal heirs of Vikram Narayan Shinde, who was tenant in the suit premises, have impugned concurrent findings recorded by both the Court's below, thereby directing the eviction of the Applicants from the suit premises under the provisions of The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (*for short, "the said Act"*).

2. Heard Mr.Kaustubh Patil, learned Advocate for the Applicants, Ms.Sarika Shetye, learned Advocate for the Respondents. Perused entire record.

For the sake of brevity, the parties herein will be referred to as per their original nomenclature before the Trial Court.

3. The relationship between late Vikram Shinde as a tenant of Mahadeo Mali i.e. predecessor-in-title of Respondent Nos.1 to 5 is not in dispute. The predecessor of the Applicants was a tenant in the suit property, more specifically described in para 1 of the plaint. The predecessor-in-title of Respondent Nos.1 to 5 being plaintiff had filed Regular Civil Suit No. 39 of 1994 before the Trial Court against the defendant for eviction on the grounds of arrears of rent under Section 12 and acquisition of suitable alternate premises under Section 13(1)(l) of the said Act.

4. After service of summons upon the defendant, he appeared in the Suit and filed his written statement below Exh.17. He denied the contention of the plaintiff-landlord that, he was ever defaulter in making regular payment of rent, cess and taxes. He also denied the fact that, he ever acquired suitable alternate accommodation for himself and for his family members. It was contended by the defendant that the alleged accommodation had been acquired in the name of his wife and from the funds provided by his children. That he had not helped his wife in acquiring the said alternate premises in any manner.

5. The Trial Court after recording evidence and hearing the learned Advocates for the respective parties, decreed the said Suit on both the counts i.e. arrears of rent and acquisition of suitable alternate premises by the defendant. In an appeal, the Appellate Court has bifurcated finding on the

aspect of arrears of rent. The Appellate Court has come to the conclusion that, prior to filing of the Suit by the plaintiff, the defendant infact had paid arrears of rent to the plaintiff by way of moneyorders, however the plaintiff did not accept it and therefore it cannot be termed as a default till that juncture. The Appellate Court however has recorded a further finding that, during the pendency of the Suit the defendant did not 'regularly' deposit the rent along with permitted increases before the Trial Court and therefore the decree of eviction can be passed considering him as a defaulter.

6. Perusal of record indicates that, the defendant had acquired suitable alternate accommodation by way of purchasing a plot of land and constructing a house thereon. The said house has been constructed at Kamatha which is adjacent to Uran City. It was the specific case of the defendant that, he did not purchase the said property.

Record discloses that, the said property was purchased in the month of May 1988 and immediately thereafter a house was constructed thereon. That the said plot of land was purchased in the name of wife of defendant and his children contributed for construction of house thereon. It is an admitted fact on record that, the wife of defendant i.e. Applicant No.2 herein was a housewife and had no independent source of income and was dependent upon the defendant for monetary source. In his cross examination the Applicant No.1 has admitted the fact that, till 1989 it was his father who

was alone earning in the family, he is conspicuously silent about the fact that, when his elder brother joined services with Telco. The Applicant No.1 has admitted that, the Applicant No.2 i.e. his mother was housewife and had no independent source of income. It is thus clear that, in the year 1988 the original defendant i.e. father of Applicant No.1 and husband of Applicant No.2 was the only earning member in their family and from his earning acquired the said plot of land and constructed a house thereon. During the course of arguments before this Court, learned Advocate for the Applicants submitted that, the Original defendant along with his two children was residing separately in the suit premises and the Applicants herein were and are residing in the said suitable alternate premises acquired by them.

7. There is another important facet to the present case. Record indicates that, the defendant along with the Applicants herein thereafter transferred his name in the Voters list at their existing place, i.e. wherein the alternate accommodation has been acquired. It therefore clearly endorses the contention of the plaintiff that the original defendant and the Applicants herein have acquired suitable alternate accommodation for their habitation and they are not in need to occupy the suit premises. Even otherwise as of today the original defendant is not alive. As per the evidence of Applicant No.1 himself, he along with his mother, i.e. Applicant No.2 herein, are residing at the premises suitably acquired by them since the year 1989. No hardship of

any nature would be caused to the Applicants if decree of eviction is sustained against them. It is the settled position of law that, even one single ground duly proved is sufficient for eviction under the Rent Act.

8. Perusal of both the Judgments and Orders passed by Courts below would clearly indicate that, there is no illegality or irregularity committed by them either on facts or in law while passing the impugned Judgments and Orders.

9. It is an admitted fact on record that, the Applicants only are alleged to have been occupying the suit premises. As recorded earlier, it is the evidence of Applicant No.1 that he along with Applicant No.2, i.e. his mother, are residing at the said suitably alternate premises. In view thereof, the Applicants are directed to handover vacant and peaceful possession of the Suit property to the Respondent No.1 within a period of 8 days from the date of uploading of the present Order on the Official Website of High Court.

10. It is made clear that, till date there is no evidence on record before this Court that, anybody else than the Applicants are in possession of the suit premises and therefore no contention claiming or alleging obstruction in execution of the decree shall be entertained by this Court herein after. If such an application is filed by anybody else claiming to be in possession of the suit premises, the same shall be dealt with sternly and in that event this Court may be constrained to initiate action against the Applicants and any other

person claiming obstruction, under Section 340 of the Criminal Procedure Code. If the Applicants fail to handover vacant and peaceful possession to the Respondent No.1 within the stipulated period as stated above, the Respondent No.1 will be at liberty to get assistance from the local police for execution of the present Order.

If the Respondent No.1 files an application before Uran Police Station seeking assistance for execution of this Order, the Senior Inspector of Uran Police Station is directed to provide necessary assistance to the Respondent No.1 in that behalf without waiting for further Orders from this Court.

11. Civil Revision Application is accordingly dismissed in aforesaid terms.

12. In view of disposal of Civil Revision Application, Civil Application No.22 of 2020 pending therein does not survive and is accordingly disposed off.

[A.S. GADKARI, J.]

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