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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.518 OF 2018**

Sushila Manoj Kothari and Others

....Applicants.

V/s

Smt. Taramati d/o. Bhagwandas Vithlani

..... Respondent.

Mr. Vishwajeet S. Kapse i/b Sameer R. Bhalekar for the
Applicants.

Mr. Rananjay Pratap Singh for the Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE: NOVEMBER 15, 2022

P.C.:-

1. This Revision is by the Defendants. Respondent No. 1 claiming to be owner of suit property consisting of Room No. 1, First Floor, 484, Taramati Bhagwandas Kothari Chawl, opposite Jain Temple, New Mill Road, Kurla, Mumbai - 400 070, initiated RAE Suit No. 297/558 of 2008 for eviction on the ground of subletting i.e. under Section 13(1)(e) and bonafide need i.e. Section 13(1)(g) of the Maharashtra Rent Control Act, (hereinafter referred as “the Act”). The said Suit came to be decreed on 27/06/2013 on both counts i.e. subletting and

bonafide need. Feeling aggrieved, Revision Applicants preferred Appeal No. 92 of 2013 before the Small Causes Court at Mumbai which was dismissed vide judgment and order dated 26/06/2018. As such, this Revision.

2. Heard, Mr. Vishwajeet Kapse, Counsel for the Applicants and Mr. Rananjay Singh, Counsel for Respondent/owner.

3. Mr. Kapse, learned Counsel for the Applicants/tenants would urge that Exhibit- 26 & 27 are indemnity bond and undertaking. According to him, to the indemnity bond Exhibit – 26, non-applicant/ Plaintiff is a consenting party. He would urge that though in the plaint it is claimed that Defendant No. 2 who happens to be younger brother of Defendant No.1 was inducted as sub-tenant with the family members, fact remains that said induction is by consent of the Plaintiff. He would further urge that the indemnity bond and undertaking which are furnished by the Applicants in categorical terms demonstrate that tenancy of

Defendant No. 2 is duly recognized by the Plaintiff. So as to substantiate said claim, he has drawn support from very language of the recital in the indemnity bond – Exhibit-26. Further contentions of the Counsel for the Applicants are, in view of joint tenancy of Defendant Nos. 1 & 2 which is recognized by the Plaintiff, the Courts below committed an error in decreeing claim for eviction on the ground of subletting. According to him, even on appreciation of evidence. He would urge that documents are misinterpreted which were produced on record by the Defendants so also by the Plaintiff. It is urged that such documents are misread and misinterpreted in favour of the Plaintiff.

4. Counsel for the Applicants thereafter would urge that as far as issue as regards bonafide need is concerned, it is claimed that Plaintiff has not entered in witness box, whereas she has examined Power of Attorney holder and that being so Plaintiff has failed to establish bonafide need by entering into witness box. He

would urge that even otherwise there is absence of evidence on record to infer the case of bonafide need of the non-applicant/plaintiff.

5. While countering the aforesaid submissions, Counsel for non-applicant/plaintiff would support the orders impugned. According to him, case which is sought to be canvassed by the Applicants was never claimed before the Trial Court or First Appellate Court. For substantiating the said claim Counsel for non-applicant/plaintiff has relied on pleadings and evidence which is brought on record. According to Counsel for non-applicant, Applicants/Defendants have rather admitted about possession of Defendant No.2 over the suit property and in such an eventuality, Courts below were justified in decreeing the suit on the ground of subletting.

6. It is also claimed by the Counsel for non-applicant that the Plaintiff is a senior citizen and is in advance age. In view of the

same, she requires a room to take rest. Apart from above, it is claimed that Power of Attorney holder i.e. son of the Plaintiff is residing along with the Plaintiff with his family which consist of his wife and two sons. As such, it is urged that considering the family structure of the Plaintiff, Courts below were justified in appreciating and granting relief on the count of bonafide a need.

7. I have appreciated said submissions.

8. Present Revision is preferred by both the Defendants through their legal representative i.e. Original Defendant Nos. 1 & 2 who were real brothers.

9. In the plaint, the Plaintiff in categorical term has pleaded that Defendant No. 2 was permitted to occupy the suit premises temporarily as Defendant No. 2 was roofless. The plaint also contains pleadings in support of indemnity bond and undertaking which is at Exhibit-26 dated 14/06/2000. In response to the

aforesaid pleadings in para 5 & 6 of the plaint, Defendant Nos. 1 & 2 in their written statement have come out with a plea that Plaintiff was harassing Defendants by threatening them to initiate eviction proceedings and therefore at the instance of Plaintiff indemnity bond and undertaking dated 14/06/2000 was executed. Similar suggestion was given by the Defendants through cross-examination of the Plaintiff's witness. As such, case before both the Courts below pleaded by the Applicants/Defendants is that of getting indemnity bond and undertaking executed by coercion.

10. Counsel for the Applicants while arguing the issue on Exhibit-26 has claimed that Plaintiff has consented for accepting Defendant No.2 as joint tenant with Defendant No.1. So as to substantiate the said claim, he has relied on recitals of the undertaking and indemnity bond at Exhibit-26. What can be noticed is, to the indemnity bond only Plaintiff appears to be a consenting party. It was for the Defendants to explain that both

the Defendants are jointly accepted as tenant by the Plaintiff. In the evidence, Applicants/Defendants have failed to establish joint tenancy. Plaintiff rather at no point of time has issued a joint receipt in favour of alleged tenancy holders i.e. Defendant Nos. 1 & 2 but has issued rent receipt only in favour of Defendant No. 1 i.e. original tenant. In the aforesaid backdrop, the case that is sought to be put forth by Mr. Kapse, Counsel appearing for Applicants of acceptance of joint tenancy by the Plaintiff being consenting party to the indemnity bond cannot be accepted as Defendants have failed to demonstrate the same. Apart from above, Defendants have cross-examined the witness of the Plaintiff by giving suggestion that said document i.e. alleged indemnity bond to which Plaintiff is a consenting party was coerced. Defendants, though entered into witness box, they have failed to discharge the burden of proving of joint tenancy. Once the tenancy between Plaintiff and Defendant No. 1 was accepted and both the Defendants have come out with a case of joint tenancy, it was for the Defendants to prove the same which they

have failed to.

11. Documents at Exhibit-22 collly viz. electoral roll of Sumaribai Chawl i.e. suit property, document at Exhibit-23 i.e. electoral roll of Laxmibai Chawl, document at Exhibit-34 i.e. Ration Card of Defendant No. 2, document i.e. postal receipt at Exhibit-25 sufficiently establishes case of the Plaintiff of subletting as Defendant No. 2 can be conclusively inferred to be in possession of suit property from these documents. Ration Card Exhibit-34 pertains to Defendant No.2 i.e. sub-tenant. Address on the said Ration Card is of the suit property. Once the said Ration Card speaks of family members of Defendant No. 2 and address mentioned therein is of suit property, the said evidence is rightly considered by both the Courts below against the Appellants. The voter list of Sumaribai Chawl at Exhibit-22 collectively reflects name of Defendant No. 1 i.e. Defendant No. 1(a) and Defendant No. 1(b) who are legal representatives of Defendant No. 1 which shows address of Sumaribai Chawl. Death Certificate of

Defendant No.1 is produced on record at Exhibit-39 which discloses very same address of Sumaribai Chawl. Apart from above, D.W. 1 son of Defendant No. 1 has admitted during his cross-examination as to the correct address of Sumaribai Chawl mentioned in Exhibit-39 of Defendant No. 1 and his family. The said witness has also admitted in the cross-examination that Defendant No.1 and his family members used to cast their votes from Room No. 13 Sumaribai Chawl. The said witness has further gone on record to admit that tenancy of the suit premises is in the name of Defendant No.2 which demonstrates that Defendant No.2 is in exclusive possession of the suit property.

12. As regards claim of Respondent No.1 for grant of order of eviction as the suit premises are reasonably required by the Plaintiff for bonafide use is concerned, it has to be noted that a specific issue to that effect being Issue No.3 was framed. The said issue was supported by pleadings of Respondent/Plaintiff by stating existence of large family, requirement of the Plaintiff being

senior citizen and that of her son Power of Attorney holder, his wife and two sons. Specific pleadings and evidence is brought on record to that effect. Fact remains that Plaintiff is residing in Room No.2 with her family i.e. son, daughter-in-law and grand children. Claim of the Plaintiff is for seeking possession of Room No.1 occupied by Defendant No.1 and such claim on the ground of bonafide need was duly established by adducing sufficient evidence to that effect. The very requirement under Section 13(1)(g) of the Act can be inferred from analysis of evidence of Plaintiff and Defendant No.2.

13. The evidence discussed hereinbefore demonstrates that Defendant No.2/original tenant has already shifted to other place and as such, issue of hardship was rightly so considered by the Appellate Court in favour of Respondent/Plaintiff. All the relevant facets of the matter were duly considered by both the Courts below in the matter of grant of permission on the ground of bonafide need.

14. In view of above, considering the concurrent findings recorded by both the Courts below and which are in tune with the provisions of Section 13(1)(e) and 13(1)(g) of the Act, no case for interference is made out. Petition fails and same stands dismissed.

(NITIN W. SAMBRE, J.)