

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

CIVIL REVISION APPLICATION NO.1030 OF 2014

Shri Jugar @ Jiju Taherbhai Kapadganjwala
since deceased thr. Lrs. 1(a) Maleka Juzer
Kapadwanjwala & Ors

.. Applicants

Versus

Mr. Vinay Malkhansingh Chauhan

..Respondent

Mr. Sajid. Shamim i/b. Shamim & Co. for the Applicants.

Mr. T. D. Deshmukh for the Respondent.

CORAM : NITIN W. SAMBRE, J.

DATED : 16th NOVEMBER, 2022

P.C.:

1. Heard.
2. The respondent's suit being Civil Suit No. 525 of 2005 for eviction on the ground of nuisance and bonafide need was dismissed vide judgment and decree dated 13/09/2007 delivered by Small Causes Court, Pune. The appeal by the respondent/plaintiff being Civil Appeal No. 734 of 2007 was allowed vide judgment and order dated 30/07/2014. As such, this revision.
3. The case put forth by the respondent/plaintiff before the Trial Court is, (a) that the suit premises are required for expansion of business of the plaintiff as his business is growing & (b) that by displaying articles on the part of the footpath and portion of the

property owned by landlord from front side of the shop, nuisance is caused.

4. The Trial Court recorded findings against the respondent thereby recording that the respondent has failed to prove the bonafide need, comparative hardship so also the nuisance.

5. The Appellate Court allowed the appeal and recorded finding that bonafide need is very much proved, however, failed to record findings on the ground of comparative hardship. Similarly, the issue of nuisance was answered against the present applicants.

6. While questioning the order of the Appellate Court, learned counsel for the applicants would urge that the Appellate Court has committed an error of jurisdiction in failing to record reasons in support of findings of comparative hardship so also the nuisance. According to him, even the issue of bonafide requirement on the respondent is incorrectly dealt with as the Applicant has specifically demonstrated that he is in possession of the small portion of the property of the respondent, which has hardly any impact on the business of the respondent/plaintiff.

7. Learned counsel for the respondent would support the order impugned, as according to him, the Appellate Court has recorded findings of comparative hardship in favour of the respondent so also

the bonafide need and nuisance.

8. I have appreciated the submissions.

9. As far as findings on the issue of bonafide need is concerned, what can be noticed is, applicant/defendant in his cross-examination has admitted the fact about growth in the business of the respondent/plaintiff. As such, the claim put forth by the respondent/plaintiff as regards the requirement of suit premises for bonafide need, which are adjoining to his structure/shop for purpose of extension of business premises for his own use was apparently established. No error of jurisdiction could be noticed in the matter of recording of said findings.

10. As regards, comparative hardship and the issue of nuisance is concerned, even if the Appellate Court has recorded findings, however such findings are not supported by any cogent reasons. It was expected by the Appellate Court to record findings on the issue of comparative hardship by considering the nature of the requirement and the hardship faced by each of the party to the appeal.

11. Apart from above, the Appellate Court upon re-appreciation of evidence on the issue of nuisance, just because different view is possible answered the same against the applicants. The least it was

expected by the Appellate Court was to deal with the issue of nuisance by recording independent reason on appreciation of the evidence on record, which is conspicuously absent in the order impugned passed by the Appellate court.

12. As such, the claim put forth by learned counsel for the applicants that there is an error in exercising jurisdiction is quite justified.

13. As such, order delivered by the Appellate Court to the extent of recording findings on the issue of comparative hardship and nuisance are not sustainable and as such, quashed and set aside. Whereas the findings recorded on the issue of bonafide requirement is upheld.

14. The parties hereto agree that they shall appear before the Appellate Court on 12/12/2022 with their written notes of argument on the issue of the nuisance and comparative hardship and shall conclude the hearing of the appeal in any case within a period of eight weeks from the date of their appearance.

15. We expect the Appellate Court to decide the appeal expeditiously in any case by 30/03/2023.

16. As such, revision stands partly allowed.