

SGA

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 33 OF 2018
WITH
CIVIL APPLICATION NO.17045 OF 2022
IN
CIVIL REVISION APPLICATION NO. 33 OF 2018

Alkabai Chintaman Patil

... Applicant

Versus

Fula Bhila Patil
and others

... Respondents

...

Mr.Ram S. Shinde – Advocate for Applicant

Mr.Milind Patil – Advocate for Respondent Nos.1 and 2

....

CORAM : GAURI GODSE, J.

DATE : 1st March, 2023

PER COURT :

1. This civil revision application is filed by defendant no.2 for challenging the concurrent decree of eviction passed on the ground of default as well as on the ground of personal bonafide requirement of the landlords. Respondent Nos.1 and 2 had filed Regular Civil Suit No.288 of 2008 in the Court of Civil Judge, Senior Division, Dhule against respondent no.3 for possession

of the suit property being five rooms situated at plot no.28 of survey no.537/1A. It was the case of the respondent nos.1 and 2 that respondent no.3 was inducted as tenant for a period of three months from October, 2007 to December, 2007 on monthly rent of Rs.1800/-. Period of tenancy was subsequently extended on the request of respondent no.3. It was the case of respondent nos.1 and 2 that respondent no.3 refused to vacate the suit premises and also failed to make payment of rent and respondent no.3 was in arrears of rent from January, 2008 to September, 2008 for an amount of Rs.16,200/-. Hence, respondent nos.1 and 2 issued notice dated 30th June, 2008 demanding arrears of rent and also called upon the respondent no.3 to hand over possession of the suit premises. Since respondent no.3 failed to comply with the notice, Regular Civil Suit No. 288 of 2008 was filed on the ground of default as well as personal bonafide requirement.

2. Respondent no.3 appeared in the suit and filed his written statement. Thereafter, the present applicant who is the wife of respondent no. 3 appeared in the suit and filed application at Exhibit-24 for adding her as defendant. Accordingly, she was

joined as defendant no.2. Applicant filed her written statement and contended that, in fact she was the tenant of the suit premises, and that, she had carried out repairs and constructed entire floor at her expenses. It was contended that there was an oral agreement in her favour to sell the suit premises. Defendant no.2-applicant also filed application being Miscellaneous Civil Application No.114 of 2009 for fixation of standard rent.

3. Learned trial Court framed issues with respect to the bonafide requirement of the respondents/landlords as well as on the ground of default. The trial Court has recorded findings with respect to the ground of default by referring to the application for fixation of standard rent filed by the applicant. Though, the applicant had filed application for fixation of standard rent, she never filed an application for fixation of interim rent and there was never any amount deposited towards the arrears of rent. With respect to the bonafide requirement of the respondents/landlords, learned trial Court has referred to the pleadings of the respondents/landlords that they required the suit premises for their son and daughter-in-law. It was pleaded that their son and daughter-in-law were in medical practice and

hence they required it for the purpose of residence as well as for clinic. Learned trial Court has examined the pleadings as well as evidence on record with respect to the bonafide requirement of the respondents/landlords and has accepted the case of the respondents/landlords that the suit premises was required by the respondents/landlords as pleaded. Thus, learned trial Court by accepting the case of the respondents/landlords on the ground of default as well as bonafide requirement passed the decree of eviction thereby directing both the defendants i.e. the applicant as well as respondent no.3 to hand over the possession of the suit premises to the respondents-landlords.

4. Being aggrieved and dissatisfied by the decree of eviction, defendant no.2 preferred Civil Appeal No.126 of 2010. The learned Principal District Judge at Dhule framed points for consideration with respect to the ground of bonafide requirement as pleaded by the respondents-landlords as well as the ground of default. The first appellate Court has examined the pleadings as well as evidence on record on the point of bonafide requirement and has accepted the case of the respondents-landlords that they required the suit premises for their personal

bonafide use as pleaded by them for the purpose of their son and daughter-in-law. With respect to the point of arrears of rent, the first appellate Court has held that the amount of rent due and payable to the respondents-landlords till filing of the suit i.e. upto 20th October, 2008 was more than Rs.30,000/-. The first appellate Court thus disbelieved the case of the applicant/defendant no.2 with respect to an amount of Rs.30,000/- that has been claimed to have been spent by the applicant towards construction. Thus, first appellate Court confirmed the reasoning recorded by the trial Court with respect to the defendants being in arrears of rent. First Appellate Court also specifically recorded that there was nothing produced on record to show that during pendency of the suit, the defendants had deposited any amount towards arrears of rent.

5. With respect to the personal bonafide requirement of the suit premises, first appellate Court has examined the pleadings as well as oral evidence on record and accepted the case of the respondents-landlords with respect to the requirement of the suit premises for the purpose of clinic and residence of son and daughter-in-law of the respondents-landlords. First Appellate

Court has also held that for the purpose of deciding the comparative hardship in the facts of the case, it could not be said that the defendants would suffer any hardship as there is absolutely no attempt made to search any alternate accommodation. Hence, the first appellate Court held that issue of comparative hardship was also required to be held in favour of the respondents-landlords. Thus, the first appellate court by re-examining the entire evidence on record has confirmed the reasonings given by the trial Court in respect of default and bonafide requirement and confirmed the decree of eviction on both the grounds. Therefore, the present civil revision application is filed by the defendant no.2.

6. Learned advocate appearing for the applicant submitted that the suit could not have been decreed on the ground of default as there was no mandatory notice as required under section 15 of the Maharashtra Rent Control Act, 1999 ("Rent Act") any time issued to the applicant. He submitted that in fact the applicant was tenant of the suit premises, however, by taking undue advantage of the fact that the husband of the applicant was residing at Surat due to matrimonial dispute, the respondents-

landlords issued notice to the husband of the applicant on his address at Surat and suit was also filed by giving the address of her husband at Surat. In such circumstances, the applicant had appeared in the suit and prayed for adding her as a party defendant as she was the tenant of the suit premises. It is further submitted that since there was no notice issued to the applicant, there could not have been any decree on the ground of default passed against the applicant.

7. With respect to the decree for bonafide requirement that was passed, learned advocate submitted that the respondents-plaintiffs were in possession of various other properties irrespective of the suit premises and hence, there was no reason to accept the case of the respondents that they required the suit premises for their personal bonafide requirement. Learned advocate further submitted that the respondents-landlords had failed to lead any evidence in support of the ground made out for personal bonafide requirement. Hence, he submitted that for want of any supporting evidence, the decree passed on the ground of personal bonafide requirement needs re-consideration and hence civil revision application needs to be admitted.

8. Learned counsel on behalf of the respondents-landlords submitted that perusal of the written statement filed by the applicant would show that the applicant has sought to contend that there was an oral agreement for sale of the suit premises in her favour and that pursuant to the oral agreement between the parties, she had spent huge amount and had carried out the construction. Learned advocate for the respondents-landlords submitted that there was nothing on record to show that the applicant had tenancy rights independent of respondent no.3. He further submitted that even otherwise the applicant had failed to deposit the arrears of the rent after appearing in the suit and being added as a party defendant. With respect to the ground of bonafide requirement, learned advocate for the respondents/landlords submitted that it is well established principle of law that the landlord is required to only specifically plead with respect to personal requirement. In the present case, landlords adduced evidence of respondent no.1 in support of ground of bonafide personal requirement. He submitted that oral evidence led by respondent no.1 will show that the suit premises were bonafide required by them for their son and daughter-in-

law, who were in medical profession, who required the suit premises for their residence as well as for their clinic. He submitted that there is nothing brought on record to show that the plea of requirement was not genuine. He submitted that the point of comparative hardship is also dealt with by the first appellate Court and hence, the decree passed by both the courts on the ground of default as well as bonafide requirement is required to be confirmed and that there is no merit in the arguments made on behalf of the applicant. He, therefore, prays that civil revision application be dismissed.

9. I have considered the submissions made on behalf of the parties. I have perused the record of the present civil revision application. The case of the applicant that she is the tenant of the suit premises, and therefore without issuing any demand notice, there should not be any decree passed is concerned, the same has no merit. The applicant appeared in the suit claiming to be a tenant in respect of the suit premises. She filed an application for fixation of the standard rent. Though, the application was filed for fixation of the standard rent, there was no attempt made for fixation of any interim rent and no attempt

was made to deposit the amount towards the arrears as demanded. The Applicant failed to prove that she had any independent tenancy rights. Service of demand notice on respondent no. 3 is not disputed. There is nothing produced on record to show that demand notice was complied with. Section 15(3) of the Rent Act specifically provides that no decree for eviction shall be passed by the court in any suit for recovery of possession on the ground of arrears of standard rent and permitted increases if, within a period of ninety days from the date of service of the summons of the suit, the tenant pays or tenders in court the standard rent and permitted increases then due together with simple interest on the amount of arrears at fifteen per cent per annum and thereafter continues to pay or tenders in court regularly such standard rent and permitted increases till the suit is finally decided. In the present case, though the applicant had filed an application for fixation of standard rent nothing is produced on record to show that the applicant had deposited the amount of arrears of rent as demanded in the demand notice or as required under section 15(3) of the Rent Act within ninety days in the Court. The case

of the applicant that she had spent Rs. 30000/- on construction of the suit premises is also disbelieved by both the Courts. The learned Advocate for the applicant was unable to show any relevance of the case sought to be made out by the applicant regarding spending the said amount and the claim of the applicant that there was an oral agreement for sale in her favour. Hence, I do not find any merit in the submissions on behalf of the applicant.

10. On the ground of bonafide requirement, both the Courts have examined oral evidence of the respondents-landlords and accepted their case that the suit premises are required for their personal bonafide use. Perusal of plaint shows that respondents/landlords have come up with a case that the suit premises are required for their bonafide personal use as specifically pleaded in the plaint for the purpose of their son and daughter-in-law, who are in medical profession and they require the said suit premises for their residence and clinic. Respondent No.3 has filed his written statement denying the suit claim, however failed to lead any evidence in support of his contentions. Though, it was submitted on behalf of the applicant

that there were other properties available for their personal bonafide use, nothing is shown to me that there was any attempt made to produce on record any evidence in support of the said submission. Evidence as discussed by both the Courts and reasoning recorded with respect to the bonafide requirement do not require any interference. I do not find any illegality or perversity in the reasons recorded by both the Courts, while accepting the case of the respondents/landlords for requirement of the suit premises for their personal bonafide use. The applicant has failed to establish her submission that there are other premises available for the respondents-landlords, and therefore, they do not require the suit premises for their personal bonafide use. First Appellate Court has rightly dealt with the issue of comparative hardship by recording that the tenant is under obligation to plead and prove that when the suit for possession on the ground of bonafide requirement is filed, it is obligatory on the tenant to plead and prove that there was an attempt made for searching an alternate premises and inspite of the same, the tenant was unable to get any alternate accommodation. In the present case, there was no such case

made out by the applicant to show that any such attempt was made by her.

11. I do not find any infirmity or illegality in the reasonings recorded by both the Courts. There is no merit in the civil revision application. Hence, Civil Revision Application is dismissed.
12. In view of dismissal of the civil revision application, pending civil application is dismissed as infructuous.

[GAURI GODSE, J.]