

SGPunde

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 45 OF 2016

01. Ramesh Hemsing Thakur,
(since deceased through legal heirs),
1-A. Pushpa w/o Ramesh Thakur,
Age : 64 years, Occu. Household,
- 1-B. Rajendra s/o Ramesh Thakur,
Age : 46 years, Occu. Service,
- 1-C. Dinkar s/o Ramesh Thakur,
Age : 38 years, Occ. Labour,
1A, 1B, 1C R/o. Shani Mandir Ward,
Chawl of Badriseth, Bhusawal.
- 1-D. Nirmala w/o Dilip Thakur,
Age : 40 years, Occu. Household,
R/o. Shahad Railway Station,
Shahad, District – Thane.
- 1-E. Vijaya w/o Gulabrao Thakur,
(since deceased through legal heirs).
- 1-F. Santosh s/o Gulab Thakur,
Age : 19 years, Occu. Labour,
R/o. Shani Mandir Ward,
Chawl of Badriseth, Bhusawal,
District – Jalgaon.

... Petitioners
(Orig. Defendants)

Versus

01. Shamrao Tukaram Chaudhary,
Age : 64 years, Occu. Retired,
R/o. Shani Mandir Ward,
Chawl of Badriseth, Bhusawal,
District – Jalgaon.

02. Vasant s/o Hemsing Thakur,
Age : 71 years, Occ. Retired,
R/o. Vikas Colony, Jamner Road,
Bhusawal, District – Jalgaon.
03. Bhaskar Hemsing Sonawane,
Age : 69 years, Occu. Retired,
R/o. Jamner Road, Chawl of Badri,
Near House of Motu Sobraj,
Bhusawal, District – Jalgaon.
04. Madhukar Hemsing Thakur,
Age : 64 years, Occu. Retired,
R/o. Datta Nagar, Behind Navshakti,
Bhusawal, District – Jalgaon.
05. Jagannath Hemsing Thakur
(since deceased through legal heirs)
- 5A. Nirmala Jagannath Thakur,
Age : 45 years, Occu. Household,
- 5B. Manisha Jagannath Thakur] (Dismissed vide
Age : 31 years, Occu. Household] court's order dated
] 24.03.2017)
- 5C. Pravin Jagannath Thakur,
Age : 29 years, Occu. Labour
- 5-D. Mahesh Jagannnath Thakur,
(Deceased)
All R/o. Khamgaon Railway Station,
Railway Quarter, Tq. Buldhana,
District : Buldhana.
06. Leela Sitaram Thakur] (Dismissed vide court's
Age : 64 years, Occu. Household,] order dated 24.03.2017).
R/o. Behind Ram Mandir,
Nepanagar, District – Khandwa (M.P.)
07. Shakuntala Jagannath Thakur,

Age : 56 years, Occu. Household,
Near Laxmi Talkies, Amalner,
District : Jalgaon.

08. Anjali Shrawn Thakur (Abated)

09. Sindhu Lotan Thakur,
Age : 54 years, Occu. Household,
R/o. Near Yellow Masjid,
Dharangaon, District : Jalgaon.

10. Shantabai Vedu Thakur (Abated)

11. Indubai Pundlik Thakur] Dismissed vide court's
Age : 54 years, Occu. Household,] order dtd. 30.11.2018
R/o. Building No. 43, Galli No. 15,
Cembur, Mumbai.

... Respondents

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Mrs. A. S. Jadhav h/f Mr. P. R. Katneshwarkar – Advocate for appellants
Mr. Manish Navandar – Advocate for respondent no. 1

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CORAM : GAURI GODSE, J.

DATE : 12TH JANUARY, 2023

ORAL JUDGMENT : -

1. Rule. Rule made returnable forthwith. Taken up for final disposal.
2. This civil revision application is filed by the heirs and legal representatives of the original tenant, for challenging the concurrent decree for eviction passed by both the courts on the ground of bonafide requirement in favour of the landlord.

3. Respondent no. 1/landlord had filed Regular Civil Suit No. 531 of 1987 for possession of the suit property on the ground of bonafide requirement under Section 13 (1) (g) of the Bombay Rent Act, 1947 (the Rent Act), as well as on the ground of acquisition of alternate premises by the tenant under Section 13 (1) (l) of the Rent Act. The learned 2nd Joint Civil Judge, Junior Division, Bhusawal decreed the suit on 23rd December, 2011, on the ground of bonafide requirement of the landlord as well as on the ground that the tenant had acquired alternate accommodation. The trial court also recorded a finding that greater hardship would be suffered by the landlord in the event the decree for eviction was refused. Being aggrieved by the decree of eviction passed by the trial court, the petitioners-heirs and legal representatives of defendant no. 4 filed Regular Civil Appeal No. 362 of 2014 before the appellate court challenging the said decree. On 07th January, 2016, the learned District Judge – 1, Bhusawal, confirmed the findings recorded by the trial court and dismissed the appeal preferred by the present revision applicants. Hence, the civil revision application is filed.
4. The learned counsel appearing for the petitioners submitted that, though there is a finding recorded with respect to greater

hardship caused to the landlord, the facts on record shows that a greater hardship would be caused to the tenant as, except for the present suit premises, no other premises are available for the residence of the petitioners. She submits that the facts pleaded by the petitioners as well as the documents and evidence in support of the contentions are not properly appreciated by both the courts. She further submits that, the petitioners have specifically denied that there is any alternate accommodation acquired by them. She also submits that the oral evidence as well as documentary evidence is not properly appreciated by both the courts below. Hence, there is no ground made out by the respondents for a decree of eviction.

5. The learned counsel appearing for the respondent no. 1-landlord states that except for the suit premises no other premises are available for the respondents for the purpose of residence. There was a specific case made out which was supported by documentary evidence that after retirement, the respondent/ landlord was in need of residential accommodation and therefore, the suit was filed. The learned counsel for the respondent submits that both the courts below specifically recorded a finding by properly appreciating the oral as well as

documentary evidence, to hold that no other premises except for the present premises is available for the residence of the respondent/landlord. He further submitted that by appreciating the evidence produced on record both the courts have held that the tenant has acquired alternate accommodation. Hence, he submits that, so far as the issue of hardship is concerned the facts and circumstances show that, if the decree for eviction is refused, there will be greater hardship to the plaintiff/landlord. He, in particular, relies upon the admissions given by the petitioners in the cross-examination that the respondent/landlord and his family was residing only in two rooms along with his maternal in-laws. He further submitted that the respondent/landlord had also suggested several alternative sites to the petitioners for their residence, however, the petitioners had rejected the suggestions given by the landlord with respect to alternate accommodations available. He further relies upon the admission given by the petitioners that after the respondent no. 1 retired from his job, he was required to vacate the railway quarters and for non-availability of any accommodation, the respondent no. 1 and his family was required to reside along with his maternal-in-laws. Thus, it is submitted on behalf of the respondent no.1 that the

trial court has properly appreciated the admissions given by the petitioners, which also support the case made out by the respondent/landlord that the petitioners have acquired alternate accommodation and have also admitted the sale deed dated 27th December, 2007 with respect to the acquisition of a house property by the petitioners. Thus, it is submitted that the trial court has appreciated all the evidence on record and have correctly granted decree in favour of the respondent/landlord on the ground of bonafide requirement as well as acquisition of alternate accommodation by the petitioners. Thus, he submits that there is no merit in the revision application filed by the petitioners and the same requires to be dismissed.

6. I have heard both the sides. The pleadings of the parties as well as the evidence clearly shows that there is absolutely no merit in the submissions made on behalf of the petitioners that there are no other premises available for the petitioners. The findings of facts recorded by the trial court and confirmed by the appellate court shows that the defendants/tenants have acquired alternate accommodation. It is not in dispute that after retirement, the respondent/ landlord had to vacate his official quarters and was in need of residential accommodation and therefore, the suit was

filed. It has also come on record that due to non-availability of accommodation respondent/landlord and his family was required to stay along with his maternal-in-laws. Thus, inspite of having his own premises the respondent/landlord was deprived from using it. In so far as the submissions made with respect to greater hardship that would be caused to the petitioners is concerned, the same is also not acceptable. It is not the case made out by the petitioners that there was any attempt made on behalf of the petitioners for acquiring any other alternate accommodation after the suit was filed by the respondent/landlord. It is well settled law that when a suit for eviction is filed on the ground of bonafide requirement, it is incumbent upon the defendant/tenant to plead and prove what efforts were made for acquiring any other alternate accommodation and that inspite of making efforts, the tenant was unable to acquire alternate premises. If such a case is not made out, the tenant is not entitled to seek benefit on the ground that greater hardship would be caused to tenant. In fact evidence on record shows that respondent/landlord had suggested alternative premises to the petitioners, however they refused to accept the same.

7. The learned counsel for the respondent/landlord is right in

submitting that both the courts have correctly appreciated the documentary as well as oral evidence on record and passed a decree of eviction on the ground of bonafide requirement. The pleadings and evidence on record is well appreciated by both the courts. The learned counsel for the respondent no. 1 has relied upon the decision in the case of *N.R. Narayan Swamy Vs. B. Francis Jagan*¹, in support of the case of respondent/landlord. This decision of the Hon'ble Supreme Court is on the point of bonafide requirement being a recurring cause of action, hence it is not applicable to the facts of the present case. However, it is well settled that once a landlord has pleaded the bonafide requirement and the same is proved to be genuine, the landlord is entitled to a decree for eviction on the ground of personal bonafide requirement. There is nothing shown to me to disbelieve that the petitioners have acquired suitable alternate premises. Once there is sufficient evidence on record that the tenant has acquired suitable alternate accommodation, a landlord is also entitled to a decree of eviction on the ground of acquisition of alternate accommodation by the tenant.

8. Both the courts on appreciation of evidence, have concurrently

1 (2001) AIR (SC) 2469

recorded finding of facts and have held that respondent/landlord has proved the personal need to be genuine and bonafide. Even the issue of hardship is decided in favour of respondent/landlord. The issue of acquisition of suitable alternate accommodation is also concurrently held against the petitioners. In the limited scope of interference under Section 115 of the Code of Civil Procedure, I see no reason to interfere with the impugned judgments and decrees. For the reasons stated above, I do not find that any case for interference is made out in the present civil revision application. There is no perversity or illegality found in both the judgments impugned herein. There is no merit in the civil revision application.

9. Hence, Civil Revision Application No. 45 of 2016 is dismissed. Rule is discharged. Judgment and Decree dated 23rd December, 2011 passed by 2nd Joint Civil Judge Junior Division, Bhusawal in Regular Civil Suit No. 531 of 1987, confirmed by the learned the learned District Judge – 1, Bhusawal by judgment and decree dated 07th January, 2016, in Regular Civil Appeal No. 362 of 2014, is confirmed.
10. By order dated 22nd April, 2016, the petitioners were granted stay to the decree of eviction on a condition of depositing an amount

of Rs.1.00 lakh in this court. The learned counsel for the respondent/landlord submits that in view of the dismissal of the civil revision application, the respondent/landlord may be permitted to withdraw the amount of Rs. 1.00 lakh, which is deposited in this court pursuant to order dated 22nd April, 2016. It is well settled law that the tenant is required to pay the amount of rent by way of compensation as per the prevailing market rate in the event the tenant requires protection from the execution of the decree of eviction that is passed in favour of the landlord. The Hon'ble Supreme Court in the case of *State of Maharashtra v. Super Max International (P) Ltd.*², has held as under:

“73. In an appeal or revision, stay of execution of the decree(s) passed by the court(s) below cannot be asked for as of right. While admitting the appeal or revision, it is perfectly open to the court, to decline to grant any stay or to grant stay subject to some reasonable condition. In case stay is not granted or in case the order of stay remains inoperative for failure to satisfy the condition subject to which it is granted, the tenant in revision will not have the protection of any of the provisions under the Rent Act relied upon by Mr Lalit and in all likelihood would be evicted before the revision is finally decided. In the event the revision is allowed later on, the tenant's remedy would be only by way of restitution.

2 (2009) 9 SCC 772

74. In *Atma Ram Properties* [(2005) 1 SCC 705] the Court viewed the issue exactly in the same way (see paras 6, 8 and 9 of the decision). Further, the decision also answers Mr Lalit's submission that the tenancy did not come to end on the passing of the decree but would continue until the tenant was actually physically evicted from the premises in execution of the decree.

75. In *Atma Ram Properties* [(2005) 1 SCC 705] the Court framed two issues arising for consideration as follows: (SCC p. 714, para 10)

“10. ... This submission raises the following two issues: (i) in respect of premises enjoying the protection of rent control legislation, when does the tenancy terminate; and (ii) up to what point of time is the tenant liable to pay rent at the contractual rate and when does he become liable to pay compensation for use and occupation of the tenancy premises unbound by the contractual rate of rent to the landlord?”

76. The Court answered the first issue as follows: (*Atma Ram Properties case* [(2005) 1 SCC 705] , SCC pp. 716-17, para 16)

“16.... We are, therefore, of the opinion that the tenant having suffered a decree or order for eviction may continue his fight before the superior forum but, on the termination of the proceedings and the decree or order of eviction first passed having been maintained, the tenancy would stand terminated with effect from the date of the decree passed by the lower forum. In the case of premises governed by rent control legislation, the decree of eviction on being affirmed, would be determinative of the date of termination of tenancy and the decree of affirmation passed by the superior forum at any subsequent stage or date, would not, by reference to the doctrine of merger have the effect of postponing the date of termination of tenancy.”

. The second issue was answered as follows: (*Atma Ram Properties case* [(2005) 1 SCC 705] , SCC p. 718, para 19)

“(2) ... With effect from that date [the passing of the decree of eviction], the tenant is liable to pay mesne profits or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises and earn rent if the tenant would have vacated the premises. The landlord is not bound by the contractual rate of rent effective for the period preceding the date of the decree.” (words in parenthesis added)

(emphasis supplied)

. We are in respectful agreement with the decision of the Court in *Atma Ram Properties* [(2005) 1 SCC 705].

77. In the light of the discussions made above we hold that in an appeal or revision preferred by a tenant against an order or decree of an eviction passed under the Rent Act it is open to the appellate or the Revisional Court to stay the execution of the order or the decree on terms, including a direction to pay monthly rent at a rate higher than the contractual rent. Needless to say that in fixing the amount subject to payment of which the execution of the order/decreed is stayed, the Court would exercise restraint and would not fix any excessive, fanciful or punitive amount.

78. In the case in hand, the High Court has fixed the amount of Rs 5,40,000 per month with reference to Stamp Duty Ready Reckoner and hence, its reasonableness cannot be doubted. In fairness to Mr Lalit he did not challenge the fixation of the amount on that ground.

79. Before concluding the decision one more question needs to be addressed: what would be the position if the tenant's appeal/revision is

allowed and the eviction decree is set aside? In that event, naturally, the status quo ante would be restored and the tenant would be entitled to get back all the amounts that he was made to pay in excess of the contractual rent. *That being the position, the amount fixed by the court over and above the contractual monthly rent, ordinarily, should not be directed to be paid to the landlord during the pendency of the appeal/revision. The deposited amount, along with the accrued interest, should only be paid after the final disposal to either side depending upon the result of the case.*”

emphasis applied

11. Therefore, as the civil revision application is dismissed on merits and decree for eviction is confirmed, the respondent/landlord will be entitled to withdraw the amount of Rs. 1.00 lakh along with accrued interest thereon. Hence, the respondent no.1/landlord is permitted to withdraw the said amount of Rs. 1.00 lakh with accrued interest thereon.
12. The learned counsel appearing for the petitioners request for continuation of the interim relief that was already granted, to enable the petitioners to approach the higher court. Considering the fact that the respondent / landlord had filed a suit in the year 1987 and the decree is passed in the year 2011 on the ground of bonafide requirement, I do not find it appropriate to extend the stay that was granted by this court during the pendency of the

civil revision application. Hence, request for continuation of interim relief is rejected.

[GAURI GODSE]
JUDGE